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TITLE 15. REVENUE

Chapter

TITLE 15. REVENUE

CHAPTER 1. DEPARTMENT OF REVENUE
ESTATE TAX SECTION

(Authority: A.R.S. § 42-1501 et seq.)

ARTICLE 1. GENERAL PROVISIONS

Laws 1979, Chap. 212 effective January 1, 1980, repealed A.R.S. Title 42, Chapter 9 and added a new Chapter 9.

Former Article 1 consisting of Sections R15-1-01 through R15-1-12 repealed, new Article 1 consisting of Sections R15-1-101 through R15-1-104 adopted and renumbered effective October 30, 1981.

Section

ARTICLE 1. GENERAL PROVISIONS

R15-1-101. Administration and definitions

A. Definitions.

1. A resident shall be a person who is domiciled in Arizona. Domicile shall be the place with which the person has a settled connection for legal purposes, either because the person's home is there or because the place is assigned to the person by law. Evidence of a person's intent as to domicile shall include:
   a. Ownership or lease and occupancy of dwelling.
   b. Place of transaction of business or employment.
   c. Registration as voter.
   d. Place of filing of federal income tax return.
   e. Declaration of place of residence in will.
   f. Recitals in deeds and legal documents.
   g. Written and oral declarations generally.
   h. Situs of bank accounts and securities.
   i. Membership in church, clubs, lodges, societies.
   j. Automobile registration and driver's license.
   k. Claiming or filing homestead exemptions.
   l. Registration in public or private schools of minor children living with their parents.

   Any of the foregoing evidentiary factors shall not be conclusive and the Estate Tax Section of the Arizona Department of Revenue shall determine domicile under all circumstances applicable.
2. Personal property shall include all property that is not real property.
3. Intangible personal property shall include currency, bank accounts, franchises, stocks and bonds, credits, choses in action, business goodwill and all other property that represents a right rather than a physical object. For the purpose of this definition, currency shall not include money that was held by the decedent for its numismatic value or as jewelry.
4. Tangible personal property shall include personal property that can be felt or touched and is not intangible.

B. Mortgages on real property, land sale contracts and land trusts: mortgages are not an interest in land, but a lien on land and are, therefore, personal property.

1. A lease is an ownership right or interest in land and shall be classified as real property.
2. A contract to convey land constitutes an equitable conversion so that the seller's interest shall be personal property and the buyer's interest shall be real property.
3. Land trust agreements, subdivision or similar trusts, commonly employed by Arizona trust companies which expressly provide that the interest of the beneficiary of the trust shall be deemed to be personal property with no right, title or interest or to any portion or specific part of the real estate, but only an interest in the earnings or proceeds, then the interest of the beneficiary shall be personal property. When a real estate syndicate agreement or trust provides that the beneficial interest consists of an undivided interest in the land, the interest shall be taxable as real property.

C. The Arizona estate tax return shall be filed with the estate tax return on or before the date the federal estate tax return is required to be filed.

Historical Note

Former Sections R15-1-01, R15-1-02, R15-1-04 through R15-1-10 renumbered and amended as Section R15-1-101 effective October 30, 1981 (Supp. 81-5). Amended subsection (A) effective July 23, 1985 (Supp. 85-4). Amended effective February 22, 1989 (Supp. 89-1).

R15-1-102. Partnership interest

A. When, pursuant to the Uniform Partnership Act (Chapter 2, Title 29, A.R.S.) or the partnership agreement, the partnership business is continued after the death of a partner, the interest of the decedent partner is intangible personal property and taxable in accordance with the residence of the decedent. The value of the partnership interest of a resident decedent is includible in the gross estate regardless of the business situs of the partnership or the kind of property owned by the partnership.

B. The value of the partnership interest shall include goodwill ascertained when practicable and equitable by capitalizing partnership income.

C. When the partnership is dissolved upon the death of a partner and the assets distributed in kind, the nature of the partnership assets determines whether they are includible in the state of residence or the state of physical location.

Historical Note

Former Section R15-1-03 renumbered and amended as Section R15-1-102 effective October 30, 1981 (Supp. 81-5).

R15-1-103. Safe deposit boxes

A. The safe depositary, bailee or lessor from whom the safe deposit box, receptacle or envelope is rented shall notify the Estate Tax Section of the death of any person having access to such box or receptacle, and shall not, except as hereinafter provided, deliver any of the contents thereof without permission of the Estate Tax Section, granted after inventory has been received by the Estate Tax Section.

B. Upon the death of any person in whose name any box or receptacle is rented or having access to any box or receptacle held or rented in a corporate name, or in the name of any other business entity, or in any name other than that of the decedent having such access, the procedure herein prescribed for

inventory and report to the Estate Tax Section shall be followed.

C. The original inventory of a safe deposit box or receptacle shall be sent to the Estate Tax Section, with copies retained by the bank and representative of the decedent.

D. The inventory and report to the Estate Tax Section shall contain the following information:

1. Name and address of the safe depositary.
2. The name under which the box has been held, if different from that of the name of the decedent having access thereto, and the name of the decedent.
3. Date of inventory and signatures of the persons present at the time the inventory is taken.
4. The contents shall be listed as follows:
   a. Life insurance policies -- list name of company, amount, to whom payable and ownership, if shown.
   b. Fire insurance policies -- list as various fire insurance policies.
   c. Deeds to real estate -- short description and address of property, if shown.
   d. Mortgages and notes -- list dates, amounts, to whom payable, and the maker.
   e. Stocks, common and preferred -- number of shares, name of company, name of owner.
   f. United States Savings Bonds -- group the various series, and show individual bond amounts, and to whom payable. Serial numbers need not be listed.
   g. Bearer bonds -- such as U.S. Treasury or various municipal bonds -- should be listed and described.
   h. Wills -- show date of will and name of Personal Representative.
   i. Currency -- list amount.
   j. Jewelry -- number and general description of pieces.
   k. Keepsakes without any apparent monetary value -- may be listed as keepsakes.
   l. Miscellaneous papers without any apparent monetary value -- may be so listed without any further description.
   m. Sealed envelopes indicating that they contain property or information for someone other than the box holder or the individual having access to the box -- such envelopes should not be opened but must be listed as a sealed envelope and as being the property of the person named on the sealed envelope.
   n. In the case of an inventory of a box, receptacle or envelope retained in a corporate name where the deceased is listed on the bank's records as an officer of the corporation -- the inventory shall not list in detail such property and items as clearly on their face show that they are the property of the corporation and not the property of the deceased, but such property and items shall be listed generally as "corporate property".

E. The depositary may without notice to or consent of the Estate Tax Section deliver such of the items as may be found in a safe deposit box, receptacle or envelope, as follows:

1. Wills -- to the personal representative of the deceased named therein or to the clerk of the superior court.
2. Insurance policies on the life of the deceased -- to the beneficiaries named therein.
3. Sealed envelopes described in subparagraph (D)(4)(m) -- to the person whose name appears thereon or, if he is deceased, to his personal representative.

Historical Note

Former Section R15-1-11 renumbered and amended as Section R15-1-103 effective October 30, 1981 (Supp. 81-5).

R15-1-104. Consents

A. Transfers of stock in an Arizona corporation or a corporation authorized to do business in Arizona held, solely or jointly, by a decedent who was a resident of Arizona shall be consented to by the Estate Tax Section, upon application in writing.

B. The Estate Tax Section shall, upon application in writing, consent to the release of assets belonging to a decedent who was a resident or a nonresident in the custody of any person, safe deposit company, trust company, corporation, bank or other institution located in Arizona.

C. Individual bank deposits of ten thousand dollars or less do not require the consent of the Estate Tax Section.

D. A charge of $2.00 shall be made for each consent to transfer stock of a resident decedent, with the exception of one consent per decedent.

Historical Note

Former Section R15-1-12 renumbered and amended as Section R15-1-104 effective October 30, 1981 (Supp. 81-5).

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION

(Authority: A.R.S. § 43-101 et seq.)

Chapter 2 consisting of Articles 1 through 14 adopted effective December 22, 1981.

Former Chapter 2 consisting of Article 1 repealed effective December 22, 1981.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

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R15-2-103. Reserved
R15-2-104. Reserved

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R15-2-227. Reserved
R15-2-228. Reserved
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R15-2-247. Reserved
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TAXPAYERS REQUIRED TO FILE RETURNS

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R15-2-311. Reserved

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Section
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ARTICLE 4. WITHHOLDING

WITHHOLDING BY EMPLOYER

Section
R15-2-401. Rates of withholding; election by employee
R15-2-402. Reserved

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

GENERAL PROVISIONS

R15-2-101. Title

A. Income Tax Act of 1978. These regulations relate to the Income Tax Act of 1978 which was codified in Title 43 of Arizona Revised Statutes and became effective January 1, 1979.

B. Arrangement and numbering. These regulations are arranged in sequence with the Arizona Revised Statutes; for example, the regulation relating to A.R.S. Section 43-101 would be R15-2-101. In those areas where the law is considered self-explanatory, the numbering will be noted as reserved. Arizona Revised Statutes will hereinafter be referred to as Section 43-666.

C. Dual references. References made to the "Income Tax Act of 1978", the "Act", or the "Income Tax Code" may include a dual and interchangeable meaning. References to the Income Tax Act of 1978 and the Act in particular can be construed as a substitution for the words, "Income Tax Code" or "Arizona State Income Tax Code".

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-102. Reserved

R15-2-103. Reserved

R15-2-104 Reserved

ARTICLE 2. ADMINISTRATION

GENERAL ADMINISTRATIVE PROVISIONS

R15-2-201. Reserved

R15-2-202. Reserved

R15-2-203. Reserved

R15-2-204. Reserved

R15-2-205. Reserved

R15-2-206. Reserved

POWERS AND DUTIES OF THE DEPARTMENT OF REVENUE

R15-2-221. Reserved

R15-2-222. Reserved

R15-2-223. Reserved

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R15-2-225. Reserved

R15-2-226. Reserved

R15-2-227. Reserved

R15-2-228. Reserved

R15-2-229. Reserved

R15-2-230. Reserved

R15-2-231. Renumbered

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Amended effective May 14, 1990 (Supp. 90-2).
Renumbered to R15-10-201 (Supp. 94-1).

R15-2-232. Reserved

R15-2-233. Reserved

DISPOSITION OF PROCEEDS

R15-2-241. Reserved

R15-2-242. Reserved

R15-2-243. Reserved

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R15-2-245. Reserved

R15-2-246. Reserved

R15-2-247. Reserved

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R15-2-250. Reserved

R15-2-251. Reserved

R15-2-252. Reserved

ARTICLE 3. RETURNS

TAXPAYERS REQUIRED TO FILE RETURNS

R15-2-301. Reserved

R15-2-302. Reserved

R15-2-303. Reserved

R15-2-304. Fiduciary returns

A. In cases in which the gross income of the estate or trust is $5,000 or more, a copy of the will or trust instrument sworn to by the fiduciary as a true and complete copy must be filed with the fiduciary return of the estate or trust together with a statement by the fiduciary indicating the provisions of the will or trust instrument which in his opinion determine the extent to which the income of the estate or trust is taxable to the estate or trust, the beneficiaries, or the grantor respectively.

However, if a copy of the will or trust instrument and statement relating to the provisions of the will or trust instrument have once been filed, they need not be filed again if the fiduciary return contains a statement showing when they were filed. If the trust instrument is amended in any way after such copies have been filed, a copy of the amendment must be filed with the return for the taxable year in which the amendment was made. In addition, the fiduciary must attach a statement to the copy of the amendment indicating the effect, if any, in his opinion of such amendment on the extent to which the income of the estate or trust is taxable to the estate or trust, the beneficiaries, or the grantor, respectively.

B. A certificate that all taxes due or to become due from the decedent or estate for whom a fiduciary acts have been paid or secured will not be issued unless all the following requirements are complied with:

1. A return must be filed by or on behalf of the decedent and for the estate for each taxable year in which the respective incomes of the decedent or estate exceeded the requirements for filing returns.
2. Although it is possible that no tax will become due from an estate for the year in which it is distributed, since all the income of the estate may be either properly paid or credited to the beneficiaries and hence deductible, a return for each year must be filed at the time the certificate is requested, regardless of the amount of gross or net income for such year. Such return must disclose all income to be distributed to beneficiaries upon the final distribution of the estate as well as income property paid or credited to beneficiaries during the year covered by the return and prior to final distribution.
3. A statement under declaration of perjury must be made by the fiduciary on the request for certificate, regarding the status of returns filed by or on behalf of the decedent or for the estate for the four taxable years immediately preceding the date a certificate is requested. The statement required should indicate the years for which returns were filed or indicate the years for which the gross and net incomes were less than the amount necessary to require the filing of returns. If additional information is required, a supplemental statement will be requested.

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-305. Reserved

R15-2-306. Reserved

R15-2-307. Reserved

R15-2-308. Gross income defined for purposes of determination to file

A. "Gross income" for the purposes of this article shall be the gross income as defined in the Internal Revenue Code, Section 61.

B. Fifteen of the more common types of "gross income" are enumerated by Code Section 61 and are:

1. Compensation for services including fees, commissions, and similar items
2. Gross income from business
3. Gains from dealing in property
4. Interest
5. Rents
6. Royalties
7. Dividends
8. Alimony and separate maintenance payments
9. Annuities
10. Income from life insurance and endowment contracts
11. Pensions
12. Income from discharge of debt
13. Partner's share of partnership income
14. Income "in respect of a decedent" and
15. Income from an interest in an estate or trust.

C. Although nearly ever conceivable item of income may seem to fall within the above definitions, income items should nevertheless be checked against the specific exclusions in Code Section 101-123 of the Internal Revenue Code.

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-309. Reserved

R15-2-310. Reserved

R15-2-311. Reserved

FORM, PLACE AND TIME OF FILING RETURNS

R15-2-321. Reserved

R15-2-322. Reserved

R15-2-323. Reserved

R15-2-324 Reserved

R15-2-325. Time for filing returns

A. Generally, returns of income must be filed on or before the 15th day of the fourth full calendar month following the close of the taxable year. This rule is subject to several exceptions in which the time for filing is as follows:

1. In the case of a final return of a decedent for a fractional part of a year the return shall be filed on or before the 15th day of the fourth month following the close of the 12-month period which began with the first day of such fractional part of the year.
2. In the case of any return for a fractional part of a year, the Department may upon a showing by the taxpayer of unusual circumstances, prescribe a later time for the filing of the return.
3. In the case of a corporation going into liquidation during any taxable year after completion of such liquidation, the corporation may prepare a return for that year covering the income of the corporation for the part of the year during which it was engaged in business and may immediately file such return with the Department.

B. The due date is the date on or before which a return is required to be filed in accordance with the provisions of the Act and the regulations prescribed thereunder or the last day of the period covered by an extension of time granted by this Department. When the due date falls on Saturday, Sunday or a legal holiday, the due date for filing returns will be the business day following such Saturday, Sunday or legal holiday. If placed in the mails, the returns should be posted in ample time under ordinary handling of the mails to reach the office of the Department on or before the date on which the return is required to be filed. If a return is made and placed in the mails properly addressed and postage paid on or before the due date, a penalty will not be attached should the return not actually be received by such office until subsequent to that date.

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-326. Renumbered

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Section R15-2-326 renumbered to R15-10-202 at 5
A.A.R. 1619, May 28, 1999 (Supp. 99-2).

R15-2-327. Reserved

R15-2-328. Returns filed by persons outside the United States

If by reason of being outside the United States a taxpayer is unable to perform as required by Title 43, he may by written request to the Income Tax Audit Section explain the circumstances and request that the period in which he was unable to comply be disregarded. The written explanation for the taxpayer being unable to file his return shall be submitted to the Department as soon as possible after his return to the United States. If the Department determines that the causes are such that it was impossible or impracticable for the taxpayer to otherwise timely file his return, the taxpayer will be relieved from the interest and penalties that would have accrued from his failure to file a timely return.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

INFORMATION RETURNS

R15-2-341. Common trust fund returns

A. In order for a fund maintained by a bank or a trust company to be designated as a "common trust fund", such fund must be maintained by such a bank or a trust company exclusively for the collective investment and reinvestment of monies contributed thereto by the bank or the trust company acting alone or in conjunction with one or more co-fiduciaries, but acting solely in the capacity of the bank or the trust company as:

1. a trustee of a trust created by will, deed, agreement, declaration of trust, or order of the court;
2. an executor of the will of or as an administrator of the estate of a deceased person;
3. a guardian of the estate of an infant, of an incompetent individual, or of an absent individual.

B. Income of participants in common trust fund

1. Each participant in a common trust fund is required to include the following in computing the net income of the fund for the taxable year within which or with which the taxable year of the fund ends whether or not distributed and whether or not it is distributable:
   a. the proportionate share of the gains and losses of the fund from sales or exchanges of capital assets held for not more than 12 months computed as provided in this section as part of the gains and losses of the fund from the sales or the exchanges of capital assets held for not more than 12 months.
   b. the proportionate share of the gains and losses of the fund from sales or exchanges of capital assets held for more than 12 months computed as provided in this Section as part of the gains and the losses of the fund from the sales or the exchanges of the capital assets held for more than 12 months.
   c. the proportionate share of the ordinary net income or the ordinary net loss of the common trust fund computed as provided in this Section.
2. The proportionate share of each participant in the gains and losses from sales or exchange of capital assets held for not more than 12 months, gains and losses from sales or exchanges of capital assets held for more than 12 months, the ordinary net income or the ordinary net loss, and the exempt interest shall be determined in accordance with the method of accounting adopted by the bank in accordance with the written plan under which the common trust fund is established and administered provided that the method clearly reflects the income of each participant. The items of income and deductions are, therefore, to be allocated to the periods between valuation dates within the taxable year established by that plan in which they were realized or sustained and the ordinary net income or ordinary net loss, gains and losses from sales or exchanges of capital assets held for not more than 12 months, and gains and losses from sales or exchanges of capital assets held for more than 12 months computed for each such period. The proportionate shares of the participants in such items are then to be determined.
3. The provisions of paragraph (2) of this subsection may be illustrated by the following example:

Example 1. The plan of a common trust fund provides for quarterly valuaton dates and for the computation and the distribution of the income on a quarterly basis except that there shall not be a distribution of the capital gains. The participants are as follows:

Trusts A, B, C, and D for the first quarter
Trusts A, B, C, and E for the second quarter
Trusts A, B, F, and G for the third and fourth quarters.

The participants have equal participating interests. The ordinary net income as computer on the quarterly basis, the short-term capital gains, and the long-term loss for the taxable year were as follows:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Ordinary net income	$200	$300	$200	$400	$1,100
Short-term capital gain	200	200	200	100	600
Long-term capital loss	100	200	100	200	600

Example 2. Participants' shares of ordinary net income are as follows:

Participants' Shares of Ordinary Net Income

Participant	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
A	$50	$75	$$50	$100	$275
B	50	75	50	100	275
C	50	75	--	--	125
D	50	--	--	--	50
E	--	75	--	--	75
F	--	--	50	100	150
G	--	--	50	100	150

Example 3. The participants' shares of the short-term capital gain as are follows:

Participants' Shares of Ordinary Net Income

Participant	Quarter	Quarter	Quarter	Quarter	Total
A	$50	$25	$$50	$25	$150
B	50	25	50	25	150
C	50	25	--	--	75
D	50	--	--	--	50
E	--	25	--	--	25
F	--	--	50	25	75
G	--	--	50	25	75
Total	$200	$100	$200	$100	$600

C. Returns of common trust funds. A bank or trust company maintaining a common trust fund shall make a return of income of the common trust fund regardless of the amount of net income of the fund. If a bank maintains more than one common trust fund, a separate return shall be made for each. The return shall be made for the taxable year of the common trust fund on the form prescribed by the Department in accordance with these regulations and the instructions on the form or issued therewith. The return of a common trust fund shall state specifically the items of gross income and the deductions allowed under the Act pertaining to the fund and shall include each participant's name and address, the ordinary net income or loss, and the proportionate share of the gains and the losses from sales or exchanges of capital assets. A copy of the plan of the common trust fund must be filed with the return. However, if a copy of that plan has once been filed with a return, it need not again be filed if the return contains a statement showing when and where it was filed. If the plan is amended in any way after that copy has been filed, a copy of the amendment must be filed with the return for the taxable year in which the amendment was made. Each such return shall be verified in the same manner as the return filed by the bank or the trust company.

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-342. Repealed

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6).
Section repealed by final rulemaking at 5 A.A.R. 2164, effective June 16, 1999 (Supp. 99-2).

R15-2-343. Information required of certain trusts claiming charitable deductions

A. General. Every trust other than a trust described in Subsection (B) of this section claiming a charitable deduction shall file a return of information relative to the taxable year for which the deduction is claimed. The return shall be filed with the Department on or before the 15th day of the fourth month following the close of the taxable year of the trust. The return shall set forth the name and the address of the trust as well as detailed information concerning the trust as may be prescribed by the Department in the instructions issued or on a form supplied by the trust as follows:

1. The amount of the charitable deduction taken for the taxable year should be shown separately for each class of activity for which disbursements or amounts permanently set aside during that year were paid.
2. The amount paid during the taxable year that represents the amounts permanently set aside in previous years for charitable deductions should list separately each class of activity for which the disbursements were made and the total amount paid.
3. The amount for charitable deductions taken in previous years but have not been paid at the beginning of the taxable year.
4. The amount paid from principal in the taxable year for charitable purposes and listing separately for each class

of activity the disbursements made and the total amounts paid.

5. The total amount paid from principal in previous years for charitable purposes.
6. The gross income of the trust for the taxable year and the expenses attributable to the trust in sufficient detail to show the different categories of income and expense.
7. A balance sheet showing the assets, liabilities, and the net worth of the trust as of the beginning of the taxable year.

B. The provisions of Subsection (A) of this Section relative to the filing of information returns shall not be applicable to the taxable year of a trust if the trust is specifically exempt from filing a return under the provisions of Section 43-1242.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-344. Reserved

R15-2-345. Reserved

R15-2-346. Reserved

R15-2-347. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Section repealed by final rulemaking at 5 A.A.R. 2164, effective June 16, 1999 (Supp. 99-2).

USE OF RETURNS BY DEPARTMENT

R15-2-361. Reserved

R15-2-362. Reserved

R15-2-363. Reserved

R15-2-364. Reserved

R15-2-365. Reserved

R15-2-366. Reserved

R15-2-367. Reserved

CONFIDENTIALITY

R15-2-381. Reserved

R15-2-382. Reserved

RETURNS EXECUTED BY DEPARTMENT

R15-2-391. Reserved

R15-2-392. Reserved

R15-2-393. Reserved

ARTICLE 4. WITHHOLDING

WITHHOLDING BY EMPLOYER

R15-2-401. Rates of withholding; election by employee

A. At the end of each calendar quarter, the employer shall recompute its quarterly average and file according to the due dates established by law.

B. If the employer has no historical data for four full consecutive quarters upon which to determine the lawful due dates of his payments, he shall determine the due dates for payments under this subsection. The due dates for the payments to the Department shall conform to the federal deposit requirements whenever the quarterly average for state withholding exceeds $1500.

1. Except as provided in R15-2-401(B)(5) a newly formed business or a new employer shall remit payment for the first quarter that it withholds taxes on or before the last day of the first month of the next calendar quarter.
2. If the employer's first payment under R14-2-401(B)(1) does not represent a full quarter of withholding, the employer shall determine its quarterly average for the first full quarter by annualizing the amount withheld in the first partial quarter and dividing by four.
3. During the second full quarter an employer shall consider the quarterly average to be the amount collected for the first full quarter of withholding. The employer shall determine the quarterly average in subsequent full quarters by adding the amounts withheld during the prior full quarters and dividing by the number of full quarters of withholding activity.
4. If two or more employers consolidate their business activities to form one enterprise, they shall use their combined withholding for the preceding four full calendar quarters to determine their quarterly average. If one of the employers has fewer than four full calendar quarters of withholding activity, it shall annualize the amounts withheld, divide by four and combine this quotient with the quarterly average of the other employer.
5. An employer who purchases an existing business shall use the previous owner's quarterly average to determine the due dates for payments.

C. The employer shall submit the quarterly reconciliation required pursuant to A.R.S. § 43-401 upon the quarterly reconciliation form supplied by the Department.

D. Employers shall determine the rates of withholding as follows:

1. The election of a ten percent state withholding rate by an employee who earns a base salary of less than $15,000 annually shall govern the deduction for withholding until one of the following situations occurs:
   a. If the employee has 12 full months of work history with the employer, the employer shall determine his total compensation for the 12-month period. If the records for that period show that the employee earned $15,000 or more, the employer shall adjust the rate of withholding to 15 percent beginning the next full pay period following the determination. This rate of withholding shall continue through the end of the calendar year. At the end of that calendar year and at the end of each succeeding calendar year, the employer shall redetermine the employee's total annual compensation. If the employee's annual compensation for the preceding year changes his rate of withholding, the rate change shall begin the next full pay period following the determination;
   b. If the employee has less than 12 full months of work history with the employer, the employer shall determine the employee's annualized compensation at the end of the month. If the employer determines that the employee's annualized compensation is equal to or greater than $15,000, the employer shall adjust the employee's rate of withholding to 15 percent beginning the next full pay period following the determination. The rate shall remain at 15 percent until the employee has been employed for 12 full months. After 12 full months of employment, the employer shall determine the rate in accordance with R15-2-401(D)(1)(a); or
   c. If the employee receives a salary increase that makes his annualized compensation equal to or greater than $15,000, the employer shall adjust the employee's

rate of withholding to 15 percent beginning the next full pay period following the receipt of the increase by the employee.

2. An employee who has elected to state withholding rate of 15 or 20 percent may later elect to reduce the rate to ten percent if his annual compensation is not equal to or greater than $15,000.

Historical Note
Adopted effective November 5, 1986 (Supp. 86-6).

R15-2-402. Reserved

R15-2-403. Excluded employment

Section 43-403 excludes the following types of employment from the withholding provisions of the Act:

1. Wages paid for active service in the military or naval forces of the United States.
2. Wages paid to employees of a common carrier when that employee is a non-resident of Arizona and regularly performs services inside and outside the state.
3. Wages paid for domestic service in a private house. Generally, service of a household nature in or about a private house includes services rendered by cooks, maids, butlers, valets, laundresses, furnace men, gardener, footmen, grooms, and chauffeurs of automobiles for family use. If the house is utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise, it ceases to be a private house and the remuneration paid for services performed is not expected. The remuneration paid for the services enumerated above is not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs, hotels, hospitals, eleemosynary institutions, or commercial offices or establishments. Remuneration paid for services performed as a private secretary even though performed in the employer's house is not within the exception.
4. Wages paid by employers other than corporations for casual labor not in the course of the employer's trade or business. Such labor would include the labor performed by a carpenter employed by an individual to do incidental work on his house. However, if such an individual employed a carpenter to do incidental work in a factory operated by an individual, the work would be in the course of the individual's trade or business and the remuneration paid for that labor is not exempted. Seasonal employment of sales clerks during the Christmas rush for instance is not exempted employment. Remuneration paid for casual labor performed for a corporation is deemed to be in the course of the trade or the business of the corporation and therefore, is subject to withholding.
5. Seasonal agricultural labor.
   a. Withholding tax is not required to be withheld on wages paid to part-time or seasonal employees whose services to the employer consist solely of labor in connection with the planting, cultivating, harvesting, or field packing of seasonal agricultural crops except those employees whose principal duties are to operate any mechanically driven device in such operations. A "part-time" or seasonal employee is construed to mean an individual hired to assist in one of the steps in the development of a seasonal agricultural crop not otherwise engaged by the same employer with the understanding that his employment will be terminated on or before the completion of that step. Withholding tax is required to be withheld on the entire wages paid to regular farm employees and those whose principal duties are to operate mechanically driven devices even though they are engaged in planting, cultivating, or harvesting crops as a part of their duties.
   b. Withholding tax is required to be withheld on wages paid to seasonal employees in the activities of canning and other food processing, logging, sheep shearing, etc., as they are not exclusively in connection with seasonal agricultural crops.
   c. Withholding tax is required to be withheld on wages paid in such agricultural activities as the care of poultry or livestock, dairy farming, etc., as they are not in connection with the planting, cultivating, or harvesting of seasonal agricultural crops.
6. The above enumerated exempt occupations are exclusive and all other payments of wages are subject to withholding. However, the withholding of the tax will never be required on the payment of wages to employees if federal income tax is not required to be withheld.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-404. Reserved

RIGHTS AND DUTIES OF EMPLOYERS

R15-2-411. Reserved

R15-2-412. Reserved

R15-2-413. Reserved

R15-2-414. Reserved

R15-2-415 Reserved

R15-2-416. Reserved

R15-2-417. Reserved

WITHHOLDING AS PAYMENT OF TAX FOR EMPLOYEE

R15-2-431. Amounts withheld (reference R15-2-503)

R15-2-432. Refund of excess withholding

In the case of the death of a husband or wife or both when a joint return has been filed for the taxable year, or of a single person, and a refund is claimed because of an overpayment of income tax withheld, it is necessary that the surviving spouse or other claimant attach a notarized statement to the return so that the refund may be issued in the name of the claimant. The statement shall designate the name and date of death of the deceased taxpayer and the name and address of the claimant.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-433. Reserved

R15-2-434. Reserved

R15-2-435. Reserved

ARTICLE 5. PAYMENT AND COLLECTION OF TAX

TIME AND PLACE FOR PAYMENT OF TAX

R15-2-501. Reserved

R15-2-502. Reserved

R15-2-503. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective September 12, 1989 (Supp. 89-3).

R15-2-504. Reserved

R15-2-505. Reserved

R15-2-506. Reserved

ASSESSMENTS FOR TAX

R15-2-521. Reserved

DEFICIENCY ASSESSMENTS

R15-2-531. Reserved

R15-2-532. Reserved

R15-2-533. Reserved

R15-2-534. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Amended effective September 12, 1989 (Supp. 89-3).
Section repealed by final rulemaking at 5 A.A.R. 2164, effective June 16, 1999 (Supp. 99-2).

R15-2-535. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective September 12, 1989 (Supp. 89-3).

R15-2-536. Reserved

R15-2-437. Reserved

R15-2-538. Reserved

APPEALS OF DEFICIENCY ASSESSMENT

R15-2-551. Reserved

R15-2-552. Reserved

R15-2-553. Reserved

COLLECTIONS

R15-2-561. Reserved

R15-2-562. Reserved

R15-2-563. Reserved

R15-2-564. Reserved

R15-2-565. Reserved

R15-2-566. Reserved

R15-2-567. Reserved

R15-2-568. Reserved

R15-2-569. Reserved

R15-2-570. Reserved

R15-2-571. Reserved

R15-2-572. Reserved

R15-2-573. Reserved

ESTIMATED TAX

R1 5-2-581. Payment of Estimated Income Tax by Individuals

A. Individual taxpayers subject to Arizona income tax who reasonably expect to have Arizona gross income of more than $75,000.00 in the current tax year or had Arizona gross income of more than $75,000.00 in the preceding tax year are subject to the provisions in this rule. For tax years ending on or before 12/31/92, the requirement to make estimated payments is based on Arizona gross income of more than $100,000.00.
1. The requirement to make estimated tax payments is based on the Arizona gross income of each individual taxpayer.
2. All taxpayers, whether classified as a nonresident or a resident, shall be subject to the estimated payment requirements.
3. Nonresidents shall use the definition of Arizona gross income pursuant to A.R.S. § 43-1091 for purposes of determining if estimated tax payments are required.
4. Individual taxpayers, moving into or out of Arizona during a tax year resulting in a change of residency status, shall use the definition of Arizona gross income in A.R.S. § 43-1001, allocated pursuant to A.R.S. § 43-1097, for purposes of determining if estimated tax payments are required for the portion of the year in which they are Arizona residents.

B. In projecting current Arizona gross income, the taxpayer shall use ordinary business care and prudence in determining if Arizona estimated tax payments are required.
1. The reasonableness of the projection of Arizona gross income shall depend on the facts of each case and the burden of proof rests on the taxpayer to substantiate that penalty and interest shall not be imposed for non-payment, late payment, or underpayment of estimated tax.
2. The taxpayer may request a waiver from the requirement to make estimated payments for one or more payment periods in the current year by attaching a written statement to the individual's income tax return for that year.
   a. The waiver is available only if the individual taxpayer did not have Arizona gross income over $75,000.00 in the preceding tax year and cannot reasonably project that Arizona gross income for the current year exceeds $75,000.00. ($100,000.00 for tax years ending on or before 12/31/92).
   b. The statement shall include the reason why Arizona gross income could not have reasonably been projected for one or more payment periods during the current tax year.

C. Other than as provided in subsection (D), Arizona estimated tax payments shall be paid in four equal installments on or before due dates established by the Internal Revenue Code.
1. For purposes of this rule, Arizona withholding shall be considered an estimated payment which is paid equally on each due date, unless the taxpayer establishes otherwise.
2. The sum of Arizona estimated tax payments, when combined with the taxpayer's Arizona withholding for the current year, shall equal the lesser of:
   a. At least 90% of the Arizona tax liability for the current year; or
   b. 100% of the Arizona tax liability, as shown on the personal income tax return for the preceding taxable year. This clause shall apply only if the individual is required to file and does file an Arizona personal income tax return for the preceding taxable year pursuant to the provisions under A.R.S. § 43-301.

D. Those taxpayers qualifying under the following circumstances may make Arizona estimated tax payments in other than four equal installments.

1. There shall be no requirement to make the fourth estimated tax payment if the taxpayer files an Arizona tax return, covering a calendar year, on or before January 31 of the year following the tax year or, for a fiscal year taxpayer, on or before the last day of the month following the close of the fiscal year, and the taxpayer pays in full the amount stated on the return as payable.
2. An individual who reports as a farmer or fisherman on the federal income tax return is only required to make one installment for a taxable year. The due date for such installment shall be January 15th of the year following a calendar tax year or the 15th day of the first month after the end of a fiscal year. There shall be no requirement to make this payment if, on or before March 1 of the year following a calendar tax year or on or before the first day of the third month after the end of a fiscal year, the taxpayer files an Arizona income tax return for the tax year and pays in full the amount stated on the return as payable.
3. An individual who elects to be treated as a nonresident alien on the federal income tax return may make three estimated payments.
   a. Payment shall be made on or before due dates established by the Internal Revenue Code.
   b. The amount of the first required payment shall be 50% of the total estimated tax liability for the tax year. The second and third payments shall each be 25% of the total estimated tax liability.
4. A taxpayer may be able to reduce the amount of one or more required installments if income is not received evenly throughout the tax year. A taxpayer who uses the annualization method for determining the amount of the required installments on the federal individual income tax return may also use the annualization method on the Arizona personal income tax return. A taxpayer electing to use the annualization method for Arizona purposes shall use the method as delineated on the Arizona return and in the accompanying instructions. If the taxpayer elects to use the annualization method for one due date in a tax year, the taxpayer shall use that method for all due dates for that tax year.
5. A taxpayer, due to the provisions in subsection (B) of this rule, may not be required to make four equal payments of estimated tax. Such a taxpayer shall be liable for the payment of estimated tax beginning no later than the first due date after the taxpayer establishes that the Arizona gross income requirement is applicable.
   a. If the taxpayer is first liable for the payment of estimated tax beginning in the second payment period, such payment shall equal 50% of the total liability for the current tax year. If the liability occurs in the third payment period, such payment shall equal 75% of the total liability for the current tax year. Subsequent payments shall equal 25% each.
   b. The total of these payments shall equal the amount pursuant to subsection (C) of this rule.

E. Effective 7/17/93, a penalty shall be assessed on the underpayment amount for each payment period pursuant to A.R.S. § 42-136(O). The underpayment amount is the difference between the estimated payment required to be made and the estimated payment actually paid. Penalty and interest shall be assessed for each underpayment amount for the number of days that amount remains unpaid.

1. For the purpose of computing penalty and interest, a payment shall be applied to the quarter designated by the taxpayer regardless of any outstanding underpayment balance on an earlier installment. Any overpayment of the quarterly amount shall be applied to outstanding estimated payment balances, beginning with the oldest outstanding balance, unless otherwise designated by the taxpayer.
2. Penalty and interest, on late payment, non-payment or underpayment amounts of estimated tax, shall stop accruing at the earlier of the date of payment of the underpaid amount or of the original due date of the income tax return for the tax year in which the estimated payment is required.

F. Payments of estimated tax shall be made by check, cashier's check, certified check, money order, U.S. currency, or by the application of an overpayment from a prior tax return.

Historical Note
Adopted effective November 5, 1986 (Supp. 86-6). Amended effective March 31, 1990 (Supp. 90-1). Correction to Historical Note which should read "Amended by emergency effective March 8, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1)." Emergency amendments re-adopted with changes effective May 23, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency repeal and new adoption effective February 7, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3).

R15-2-581.01. Emergency Expired

Historical Note
Adopted by emergency effective February 7, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired, text deleted.

R15-2-582. Reserved

ARTICLE 6. ABATEMENTS, CREDITS AND REFUNDS

REFUNDS

R15-2-601. Reserved
R15-2-602. Reserved
R15-2-603. Reserved
R15-2-604. Reserved
R15-2-605. Reserved
R15-2-606. Reserved
R15-2-607. Reserved
R15-2-608. Reserved
R15-2-609. Reserved
R15-2-610. Reserved
R15-2-611. Reserved
R15-2-612. Reserved

INTEREST ON REFUNDS

R15-2-621. Reserved
R15-2-622. Reserved

R15-2-922. Reserved

R15-2-923. Reserved

RETURNS FOR A PERIOD OF LESS THAN 12 MONTHS

R15-2-931. Reserved

R15-2-932. Reserved

R15-2-933. Application to file return for short period income

A taxpayer desiring the benefit of Section 43-933 must file an application for it. The application for the benefits of Section 43-933 must be filed not later than the time prescribed for filing the taxpayer's return for the first taxable year which ends on or after the last day of December or the 12th month after the beginning of the short period. In this case, the taxpayer must file his application not later than January 15, the time prescribed for filing the return for his fiscal year ending September 30. However, if he obtains an extension of time for filing the return for such fiscal year, he may file his application during the period of such extension. If the Department determines that the taxpayer has established the amount of the net income for the 12-month period, any excess of the tax paid for the short period over the tax computed under Section 43-933 will be credited or refunded to the taxpayer in the same manner as in the case of an overpayment.

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-934. Reserved

ALLOCATION OF INCOME AND DEDUCTIONS BY THE DEPARTMENT

R15-2-941. Reserved

R15-2-942. Reserved

R15-2-943. Reserved

R15-2-944. Reserved

R15-2-945. Reserved

R15-2-946. Reserved

R15-2-947. Consolidated returns by controlled corporations

A. Definitions. For purposes of this Section, the following definitions shall apply:

1. Consolidated return. A consolidated return is a single consolidated income tax return by a group of corporations meeting common ownership standards. The member entities may be engaged in diverse businesses and may or may not be operationally integrated. A consolidated return is a consolidation of the separate returns of each affiliated member of the group. Each member entity operating within and without Arizona will apportion income to Arizona based on a separate apportionment ratio relating only to that member. The net income and losses against member entities will be consolidated, offsetting losses against gains.
2. Combined return. A combined return is required to be filed by a group of commonly owned corporations or businesses which constitute a unitary business because the basic operations of the entities are integrated and interrelated. See R15-2-1132. The total income of the unitary group must be combined and allocated to Arizona for taxation purposes by means of one apportionment formula. The combined report has the same purpose and effect as the apportionment of the net income of a unitary business conducted by a single corporation. A group of corporations operating wholly in Arizona may be required to file a combined return if the group constitutes a unitary business. See A.R.S. § 43-942. In the case of such wholly owned Arizona corporations, 100% of the net income of the unitary business is allocated to Arizona.

B. This Section provides authority for the Department to require a consolidated return under certain prescribed situations. This Section provides no authority for two or more taxpayers which operate wholly within Arizona to file a consolidated return. Two or more taxpayers which comprise a unitary business as defined in R15-2-1131 are required to file a combined, not a consolidated return. Discreet, separate and diverse taxpayers must file separate Arizona income tax returns.

Historical Note

Adopted effective February 7, 1986 (Supp. 86-1).
Correction, subsection (A), paragraph (2) (Supp. 86-6).

TRANSFEREE LIABILITY

R15-2-951. Reserved

R15-2-952. Reserved

R15-2-953. Reserved

ITEMS NOT DEDUCTIBLE

R15-2-961. Items not deductible in computing taxable income

A. Personal and family expenses. Insurance paid on a dwelling owned and occupied by a taxpayer is a personal expense and not deductible. Premiums paid for life insurance by the insured are not deductible. In the case of a professional man who rents a property for residential purposes but incidentally receives clients, patients, or caller there in connection with his professional work (his place of business being elsewhere), no part of the rent is deductible as a business expense. However, if he uses part of the house for his office, such portion of the rent as is properly attributable to such office is deductible. If the father is entitled to the services of his minor children, any allowances that he gives them whether said to be in consideration of services or otherwise are not allowable deductions in his return of income. Generally, attorneys' fees paid in a suit for divorce or separate maintenance are not deductible. However, the part of an attorney's fee paid in a divorce or separate maintenance proceeding that is properly attributable to the production or collection of amounts of includible in gross income is deductible. Amounts paid as alimony or allowance for support on divorce or separation are not deductible except as otherwise provided. The cost of equipment of an Army officer to the extent only that it is especially required by his profession and does not merely take the place of articles required in civilian life is deductible. Accordingly, the cost of a sword is an allowable deduction, but the cost of a uniform is not. See Section 43-1049 for deduction of extraordinary medical expenses including amounts paid for accident or health insurance.

B. Amounts allocable to non-includible income

1. Class of non-includible income
   a. This Section applies to income that is not required to be included in Arizona adjusted gross income or Arizona taxable income. Examples of such non-includible income would be interest exempt from the Arizona income tax by the Constitution or federal or state law, or the income of a corporation which was derived from sources outside this state. The fact that

a person's otherwise taxable income may be reduced by allowable deductions and personal exemptions will not render such income subject to this provision.

b. The object is to segregate non-includible income from the taxable income in order that a double exemption may not be obtained through the reduction of taxable income by expenses and other items incurred in the production of items of non-includible income. Accordingly, just as certain items of income are excluded from the computation of Arizona gross income and Arizona taxable income by Sections 43-1022 and 43-1122, Section 43-961 excludes from the computation of deductions all items referable to the production of non-includible income as above defined.

2. Determination of amounts allocable to a class of exempt income
   a. No deduction may be allowed for the amount of any item or part thereof allocable to a class/es of exempt income, or other income not includible in Arizona adjusted gross income or Arizona taxable income.
      Example: Expenses paid or incurred for the production or collection of income that is wholly exempt from income taxes such as interest or dividends of a type not includible in gross income are not deductible expenses. Items or parts of such items directly attributable to any class/es of exempt income shall be allocated to that, and items or parts of such items directly attributable to any class/es of taxable income shall not be allocated to that.
   b. If an item is indirectly attributable both to taxable income and to non-includible income, a reasonable proportion of it determined in the light of the facts and circumstances in each case shall be allocated to each. Apportionments must in all cases be reasonable.
3. Statement of items of non-includible incomes-records
   a. A taxpayer receiving any class of non-includible income or holding any property or engaging in any activity the income from which is non-includible shall submit with his return as a part of it an itemized statement in detail showing:
      i. the amount of each class of such non-includible income and
      ii. the amount of items or parts of items allocated to each such class (the amount allocated by apportionment being shown separately) as required by paragraph (2) of this subsection.
   b. If an item is apportioned between a class of non-includible income and a class of taxable income, the statement shall show the basis of the apportionment. Such statement shall also recite that each deduction claimed in the return is not in any way referable to non-includible income.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

ARTICLE 10. INDIVIDUALS

DEFINITIONS

R15-2-1001. Reserved

R15-2-1002. Reserved

TAX RATES AND TABLES

R15-2-1011. Reserved

R15-2-1012. Reserved

ADJUSTMENTS TO ARIZONA GROSS INCOME

R15-2-1021. Additions and Subtractions to Arizona Gross Income

Federal adjusted gross income, computed according to the Internal Revenue Code, is the starting point in calculating Arizona adjusted gross income. In order to arrive at Arizona adjusted gross income, additions or subtractions shall be made to Arizona gross income pursuant to A.R.S. §§ 43-1021 and 43-1022.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6). Section R15-2-1021 repealed, new Section R15-2-1021 adopted by emergency action effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R15-2-1021 repealed again, new Section R15-2-1021 adopted again without change by emergency action effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Section R15-2-1021 repealed again, new Section R15-2-1021 adopted again by emergency action effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently repealed, new Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1021.01. Beneficiary's Share of Trust or Estate Income

A. The beneficiary of an estate or trust in calculating Arizona adjusted gross income:
   1. Shall add to federal adjusted gross income the beneficiary's share of trust or estate income as calculated pursuant to Arizona statutory provisions in A.R.S. Title 43, Chapter 13; and
   2. To prevent a double inclusion of trust or estate income, shall subtract from federal adjusted gross income the beneficiary's share of federal trust or estate income, as calculated pursuant to the Internal Revenue Code.

B. The beneficiary's share of deductions allowed pursuant to the Internal Revenue Code shall be added back to federal adjusted gross income to the extent the deductions are included in the calculation of Arizona taxable income.

C. Excess deductions and loss carryovers, allowed pursuant to the Internal Revenue Code as deductions to the beneficiary on termination of an estate or trust, shall not be allowed for Arizona purposes. The beneficiary's share of excess deductions on termination and loss carryovers shall be added back to federal adjusted gross income to the extent such deductions are included in the calculation of Arizona taxable income.

Historical Note
Emergency rule adopted effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again with changes effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1021.02. Lump Sum Distributions

If the taxpayer qualifies for and uses federal lump sum distribution treatment for a distribution from an employee trust, pension, or profit-sharing plan, the amount of the distribution so treated is not includable in federal adjusted gross income. Special treatment of lump sum distributions is not provided for in Arizona law. Therefore, in determining Arizona adjusted gross income, the ordinary income portion of a lump sum distribution shall be added to federal adjusted gross income.

Historical Note

Emergency rule effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1021.03. Annuities Where First Payment Was Received Prior to December 31, 1978

A. An addition to federal adjusted gross income shall be made to the extent that the amount of annuity payments received during the taxable year is excluded from federal adjusted gross income if the first payment from such an annuity was received prior to December 31, 1978, the taxpayer was an Arizona resident at that time, and the recovered cost of the annuity is more for Arizona purposes than the cost recovered for federal purposes.

1. The amount of the addition shall be calculated by first determining the balance of the original cost of the annuity which is remaining after subtracting the amount of accumulated distributions from the original cost of the annuity.
2. The balance of the original cost of the annuity is then subtracted from the total amount of distributions received in the current taxable year.
3. After subtracting the amount of current distributions from the balance of the cost of the original annuity, the amount remaining, which is more than the amount includible in federal adjusted gross income, shall be shown as an addition to Arizona gross income.

B. For purposes of the statutory provision, annuity tables contained in federal treasury regulations are used to compute the amount includible in federal adjusted gross income.

Historical Note

Emergency rule effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted with changes effective June 25, 1993 (Supp. 93-2).

R15-2-1021.04. Credit for Dependent Care Facilities

For tax years beginning on or after January 1, 1991, and ending before January 1, 1995, if the taxpayer takes the Arizona credit for dependent care facilities, then the amount of any depreciation included in federal adjusted gross income which has been taken on such property for the taxable year shall be added back to federal adjusted gross income.

Historical Note

Emergency rule effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1021.05. Partnership Income or Loss

Arizona partnership income or loss is calculated pursuant to A.R.S, Title 43, Chapter 14. Where the amount calculated for Arizona purposes differs from the amount calculated pursuant to Internal Revenue Code § 702(a)(8), the partner shall report the partner's share of the difference between the Arizona and federal amounts as follows:

1. If the partner's share of partnership income computed according to Arizona Revised Statutes is greater than the amount calculated according to the Internal Revenue Code, the difference shall be added to federal adjusted gross income.
2. If the partner's share of partnership loss computed according to the Internal Revenue Code is greater than that computed according to Arizona Revised Statutes, the difference shall be added to federal adjusted gross income.
3. If the partner's share of partnership income computed according to the Internal Revenue Code is greater than that computed according to Arizona Revised Statutes, the difference shall be subtracted from federal adjusted gross income.
4. If the partner's share of partnership losses computed according to Arizona Revised Statutes is greater than that computed according to the Internal Revenue Code, the difference shall be subtracted from federal adjusted gross income.

Historical Note

Emergency rule effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1021.06. Income-producing Property -- Different Basis

A. The taxpayer shall make an adjustment to federal adjusted gross income for the taxable year in which income-producing assets having a different basis for Arizona purposes than for federal purposes are sold or otherwise disposed of.

1. There shall be an addition to income if the Arizona basis of such property is smaller than the federal basis.
2. There shall be a subtraction from income if the Arizona basis of such property is larger than the federal basis.

B. Basis determination is calculated pursuant to the effective date of the Arizona Income Tax Act of 1978.

C. This provision is not applicable to depreciable property.

Historical Note

Emergency rule effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3).

Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1021.07. Pollution Control Devices

A. The taxpayer shall continue to amortize the cost of a pollution control device if an election was made pursuant to A.R.S. § 43-1030 for tax years ending on or before December 31, 1989.

B. Due to differences in federal and Arizona treatment of the amortization of pollution control devices, a taxpayer subject to the provision in subsection (A) shall add back the amortization related to the pollution control device which was deducted in arriving at federal adjusted gross income and shall subtract the amortization allowable for Arizona purposes.

Historical Note

Emergency rule effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1021.08. Child Care Facilities

A. If a taxpayer who operates a child care facility for the purpose of making a profit elected to amortize the cost associated with the purchase, construction, renovation or remodeling of a child care facility or equipment pursuant to A.R.S. § 43-1032, for tax years ending on or before December 31, 1989, the taxpayer shall continue to amortize the cost of such a facility or equipment in the same manner.

B. If such an election was made, the taxpayer shall add back the amortization related to the child care facility or equipment which was deducted in arriving at federal adjusted gross income and shall subtract the amortization allowable for Arizona purposes.

Historical Note

Emergency rule effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1021.09. Individual Net Operating Losses

A. For tax years beginning after 12/31/89, a deduction for a net operating loss for Arizona purposes:

1. Is permitted only to the extent that a net operating loss is included in federal adjusted gross income;
2. Shall not be adjusted except as delineated in subsection (B); and,
3. Shall follow federal carryback or carryforward treatment except as delineated in subsection (C).

B. A net operating loss deduction, which is included in current federal adjusted gross income, shall be added back in arriving at Arizona adjusted gross income if the deduction was taken in a prior year for Arizona purposes.

C. For Arizona purposes, no carryback of a net operating loss deduction shall be allowed to any tax year ending on or before 12/31/89.

Historical Note

Emergency rule effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1021.10. Amounts Already Deducted

If a taxpayer has deducted an expense item on a previous Arizona individual income tax return and the expense item is once more being included in computing either federal adjusted gross income or Arizona taxable income, the expense item previously deducted shall now be added back for purposes of determining Arizona adjusted gross income.

Historical Note

Emergency rule effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1022. Repealed

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6). Section R15-2-1022 repealed, new Section R15-2-1022 adopted by emergency action effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R15-2-1022 repealed again, new Section R15-2-1022 adopted again without change by emergency action effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Section R15-2-1022 repealed again, new Section R15-2-1022 adopted again by emergency action effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently repealed, new Section permanently adopted effective June 25, 1993 (Supp. 93-2). Section repealed by final rulemaking at 5 A.A.R. 2164, effective June 16, 1999 (Supp. 99-2).

R15-2-1022.01. Retirement Benefits, Annuities, Pensions

An individual is allowed to subtract up to $2,500.00 per taxable year from Arizona gross income for income received from sources as delineated in A.R.S. § 43-1022(2)(a) and (b).

1. An individual receiving income from more than one such source shall only subtract a total of $2,500.00 for all such income received during the taxable year.
2. The amount allowed as a subtraction is calculated per individual. The allowable subtraction for a married-

filing- joint return when both spouses receive income from one or more such sources is determined based on the actual amount of income which is received by each individual but not to exceed $2,500.00 per individual.

3. The aggregate subtraction allowed for purposes of individuals filing married-filing-separate returns shall not exceed the limitations as delineated in this rule.

Historical Note

Adopted effective November 5, 1986 (Supp. 86-6). Section R15-2-1022.01 repealed, new Section R15-2-1022.01 adopted by emergency action effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R15-2-1022.01 repealed again, new Section R15-2-1022.01 adopted again with changes by emergency action effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Section R15-2-1022.01 repealed again, new Section R15-2-1022.01 adopted again by emergency action effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently repealed, new Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1022.02. IRA or HR-10 Distributions

A subtraction is allowed from federal adjusted gross income for the portion of a distribution from a Self-Employed Retirement Plan (HR-10) or an Individual Retirement Account (IRA) which is comprised of contributions to such plans made prior to 12/31/75, and which was previously included in Arizona adjusted gross income.

Historical Note

Emergency rule adopted effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1022.03. Annuities Where First Payment Was Received Prior to December 31, 1978

A. A subtraction from federal adjusted gross income shall be made to the extent that the amount of annuity payments received during the taxable year is included in federal adjusted gross income, if the first payment from such an annuity was received prior to December 31, 1978, the taxpayer was an Arizona resident at that time, and the recovered cost of the annuity is less for Arizona purposes than the cost recovered for federal purposes.

1. The amount of the subtraction shall be calculated by first determining the balance of the original cost of the annuity which is remaining after subtracting the amount of accumulated distributions from the original cost of the annuity.
2. The balance of the original cost of the annuity is then subtracted from the total amount of distributions received in the current taxable year.
3. After subtracting the amount of current distributions from the balance of the cost of the original annuity, the amount remaining, which is less than the amount includible in federal adjusted gross income, shall be shown as a subtraction from Arizona gross income.

B. For purposes of the statutory provision, annuity tables contained in federal treasury regulations are used to compute the amount includible in federal adjusted gross income.

Historical Note

Emergency rule effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted with changes effective June 25, 1993 (Supp. 93-2).

R15-2-1022.04. Lottery Winnings

A. A taxpayer who won an Arizona state lottery prize before March 22, 1983, which was subject to payment in installments may subtract all amounts which are included in federal adjusted gross income.

B. A taxpayer may subtract an amount not to exceed $5,000.00 from aggregate winnings won and collected during taxable periods after March 21, 1983.

1. The combined allowable subtraction from lump sum and installment winnings won and collected after March 21, 1983, shall not exceed $5,000.00 for a taxable year.
2. A taxpayer, collecting amounts won both before March 22, 1983, and amounts won after March 21, 1983, is allowed to subtract the total winnings collected in the taxable year which were won before March 22, 1983, plus an amount of winnings not to exceed $5,000.00 won after March 21, 1983, and collected in the taxable year.

Historical Note

Emergency rule effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1022.05. Social Security and Railroad Retirement Benefits

Social security and railroad retirement benefits may be subtracted to arrive at Arizona adjusted gross income if such benefits are included in federal adjusted gross income. Pursuant to 45 U.S.C. 231(m), railroad retirement benefits may not be taxed other than under the provisions of the Internal Revenue Code. Therefore, benefits taxable as pension income, Tier II Railroad retirement benefits, and benefits taxable pursuant to Internal Revenue Code § 86, Social Security and Tier I Railroad retirement benefits are allowed as a subtraction in arriving at Arizona adjusted gross income if such amounts are included in federal adjusted gross income.

Historical Note

Emergency rule effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90

days (Supp. 93-1). Emergency expired. Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1022.06 Income Previously Recognized

If a taxpayer has included an income item on a previous Arizona income tax return and the same income item is once more being included in the computation of either federal adjusted gross income or Arizona taxable income, such income previously included shall be subtracted for purposes of determining Arizona adjusted gross income.

Historical Note

Emergency rule effective July 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule adopted again without change effective October 30, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4). Emergency expired. Emergency rule adopted again effective February 1, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Section permanently adopted effective June 25, 1993 (Supp. 93-2).

R15-2-1023. Exemption for blind persons, persons over 65 years, and for dependents

A. Exemption for the blind

1. Section 43-1023 provides an additional exemption of $500 for the taxpayer if he is blind at the close of the taxable year. An additional exemption also is allowed to the taxpayer who files separately for his spouse if the spouse is blind and for the calendar year in which the taxable year of the taxpayer begins does not have any gross income and is not the dependent of another taxpayer. In the event that the husband and the wife are both blind and file a joint return, two blind exemptions of $500 each or a total of $1,000 are allowed. The determination of whether the spouse is blind shall be made at the close of the taxable year of the taxpayer unless the spouse dies during such taxable year in which case such determination shall be made as of the time of such death.
2. If the individual for whom the exemption is claimed is not totally blind as of the last day of the taxable year of the taxpayer or, in the case of a spouse who dies during such taxable year, as of the time of such death, a taxpayer claiming an exemption allowed by Section 43-1023 for a blind taxpayer or a blind spouse shall attach to his return a certificate from a registered optometrist or a physician skilled in the diseases of the eye stating that as of the applicable status determination date in the opinion of such physician or such optometrist:
   a. the central visual acuity of the individual for whom the exemption is claimed did not exceed 20/200 in the better eye with correcting lenses, or
   b. such individual's visual acuity was accomplished by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

   If such individual is totally blind as of the status determination date, there shall be attached to the return a statement by the person/s making the return setting forth such fact.

B. Exemption for persons over 65 years of age

1. There shall be allowed an exemption of $1000 for a taxpayer who has attained the age of 65 years before the close of his taxable year.
2. There shall be allowed an exemption of $1000 for the spouse of a taxpayer if the spouse has attained the age of 65 years before the close of the taxable year and is not the dependent of another taxpayer.

C. Exemption for dependents

1. Section 43-1023 allows to a taxpayer an exemption of $600 for each dependent (Sections 43-1001 and 43-1002) who receives more than one-half of his support from the taxpayer for such calendar year. A dependent for the purposes of this credit is a person who is related to the taxpayer within one of the following relationships: child, the descendants of each child, stepchild, brother, sister, brother or sister by the half blood, stepbrother or stepsister, parent, the ancestors of such parent, stepfather or stepmother, son or daughter of the taxpayer's brother or sister, brother or sister of the taxpayer's father or mother, son-in-law, daughter-in-law, father-in-law, mother-in- law, brother-in-law, or sister-in-law.
2. In the case of a joint return, it is not necessary that the prescribed relationship exist between the person claimed as a dependent and the spouse who furnished the support. It is sufficient if the prescribed relationship exists with respect to either spouse. Thus, a husband and wife making a joint return may claim as a dependent, a daughter of the wife's brother (wife's niece) even though the husband is the one who furnished the chief support. The relationship of affinity once existing will not terminate by divorce or the death of a spouse. A legally adopted child of a person shall be considered a child of such person by blood. A child shall be deemed legally adopted when placed in the custody of a taxpayer for adoption by the latter or his spouse. A citizen or subject of a foreign country may not be claimed as a dependent unless he is a resident of the United States, Canada, or Mexico at some time during the calendar year in which the taxable year of the taxpayer begins. Whether or not over half of a person's support for the calendar year in which the taxable year of the taxpayer begins was received from the taxpayer shall be determined by reference to the amount of expense incurred by the taxpayer for such support including the value of housing supplied by the taxpayer for such dependent. A payment to a wife that is includible in the gross income of such wife shall not be considered a payment by her husband for the support of any dependent. It is not necessary that the dependent be living on any particular day during the taxable year so long as the taxpayer provides more than 50% of his support and the relationship requirements provided for above are met.
3. The only exemption allowed for a dependent of a taxpayer is that provided by Section 43-1023. The blind and over 65 exemptions are allowed only for the taxpayer or the spouse of the taxpayer. Thus, if a taxpayer provides the entire support of his father who is blind, the taxpayer is entitled to only one exemption under Section 43-1023 of $600 for his father as a dependent and is not entitled to any additional exemption because of his father's blindness.

D. The amounts stated herein are subject to inflation indexing pursuant to Sections 43-251 and 43-252.

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-1024. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective January 21, 1992 (Supp. 92-1).

R15-2-1025. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective January 26, 1995 (Supp. 95-1).

R15-2-1026. Reserved

R15-2-1027 Reserved

R15-2-1028. Reserved

R15-2-1029. Deferred exploration expenditures

A. The amount of exploration expenses added to Arizona gross income pursuant to Section 43-1021, subsection (B), paragraph (16), may be subtracted on a ratable basis as the units of produced ores or minerals discovered or explored by reason of such expenditures are sold. An election made for any taxable year shall be binding for such year.

B. The amount of the deduction allowable during the taxable year is an amount A that bears the same ratio to B (the total deferred discovery or exploration expenditures reduced by the amount of such expenditures deducted in prior taxable years) as C (the number of units of the produced ore or mineral sold during the taxable year) bears to D (the number of units of ore or mineral remaining as of the taxable year). The "number of units of ore or mineral remaining as of the taxable year" for the purposes of this proportion is the number of units of ore or mineral remaining at the end of the year to be recovered from the mines or deposits benefited by such expenditures including units recovered but not sold plus the number or units sold within the taxable year. The principles are applicable in estimating the number of units remaining as of the taxable year and the number of units sold during the year. The estimate is subject to revision in accordance with that section in the event it is ascertained as the result of further discovery, development, or operations that the remaining units are materially greater or less than the units remaining from a prior estimate.

C. If the taxpayer has paid or incurred expenditures of the character described herein, has made the election to defer such expenditures, and thereafter leases the mine or deposit benefited by such expenditures retaining a royalty interest therein, he shall be allowed the ratable deduction indicated in subsection (B).

D. The election to defer the exploration expenses up to $75,000.00 shall be made by a clear indication on the return or by a statement filed with the Department not later than six months after the filing on the return for the taxable year to which such election is applicable. In such statement, the taxpayer shall disclose the amount to be deferred, the name, location, extent, and nature of the mineral deposit to which the election relates. The election shall be binding for the taxable year relative to the election made.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-1030. Amortization of property used for atmospheric and water pollution control -- general rule

A. General rule

1. Every taxpayer is entitled by election to a deduction pertaining to the amortization of the adjusted basis for determining gain of any device, machinery, or equipment for the collection at the source of atmospheric and water pollutants and contaminants. Amortization is to be based on a period of 60 months. The taxpayer with respect to such property may elect to begin the 60-month amortization period with the month following the month in which such property was completed or acquired. The date on which or the month within which such property is completed or acquired is to be determined on the facts in the particular case.
2. An amortization deduction shall not be allowed relative to such property for any taxable year until such property has been certified by the Arizona State Department of Health Services.
3. Generally, the amortization deduction relative to each month of the 60-month period that falls within the taxable year is an amount equal to the adjusted basis of the property at the end of such month divided by the number of months, including the particular month for which the deduction is computed, remaining in the 60-month period. The adjusted basis of the property at the end of any month shall be computed without regard to the amortization deduction with respect to such property for such month. The total amortization deduction pertaining to such property for a particular taxable year is the sum of the amortization deductions allowable relative to such property for each month of the 60-month period that falls within such taxable year. The amortization deduction relative to such property taken for any month is in lieu of the deduction for depreciation that would otherwise be allowable pertaining to such property for such month.

B. Election of amortization

1. General rule. An election by the taxpayer to take amortization deductions pertaining to such property and to begin the 60-month amortization period either: with the month following the month in which such property was completed or acquired or with the taxable year in which the certification required by subsection (D) is made, whichever is later, the election shall be made by a statement to that effect in the return of the taxpayer for the taxable year in which falls the first month of the 60-month amortization period so elected.
2. Election not made in prescribed manner. If the statement of election is not made by the taxpayer as prescribed in subsection (B), paragraph (1) of this regulation, it may in the discretion of the Department of Revenue and for good cause shown be made in such manner and form and within such time as may be approved by the Department of Revenue.
3. Other requirements and considerations. No method of making such election other than those prescribed in this regulation is permitted. Any statement of election should contain a description clearly identifying each piece of property for which an amortization deduction is claimed. A taxpayer that does not elect to take amortization deductions relative to such property in the manner prescribed in this regulation shall not be entitled to amortization deductions with regard to such property.

C. Election to discontinue amortization

1. If a taxpayer has elected to take amortization deductions regarding such property, it may after such election and prior to the expiration of the 60-month amortization period, discontinue the amortization deductions relative to such property for the remainder of the 60-month period. An election to discontinue the amortization deductions shall be made by an appropriate statement in the taxpayer's income tax return for the taxable year of

discontinuance specifying the month as of the beginning of which the taxpayer elects to discontinue such deductions. If the taxpayer elects to discontinue the amortization deductions regarding such property, it shall not be entitled to any further amortization deductions with regard to such property.

2. A taxpayer that elects to discontinue amortization deductions regarding such property is entitled to a deduction for depreciation regarding the property if such property is depreciable. The deduction for depreciation shall begin with the first month when the amortization deduction is not applicable and shall be computed on the adjusted basis of the property as of the beginning of such month.

D. Certification requirements by the Arizona State Department of Health Services

1. When applying for certification of atmospheric and water pollution control devices, the prescribed application forms are to be mailed to the certifying authority. If the certifying authority determines that the equipment meets the requirements of the law, it will so certify and return two copies of the notice of certification of device to the applicant. The applicant is to attach the approved notice of certification of device form to the tax return for the first taxable year that he claims a deduction for amortization of atmospheric and water pollution control devices and retain the duplicate copy for his files.
   Application forms may be obtained from the Arizona State Department of Health Services.
2. Property eligible for certification. Property used for the collection at source of atmospheric and water pollutants and contaminants means any device, machinery, or equipment used for such purpose, the acquisition of which occurred after December 31, 1967, and much of the construction, reconstruction, erection, or installation as occurred after such date as certified by Arizona State Department of Health but does not include any land or buildings thereon.
3. Time for filing applications. Applications for certification of acquired atmospheric and water pollution control devices must be filed within six months after such acquisition. However, when such devices are constructed, such applications may be filed at any time within six months before or six months after the completion of the devices.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-1031. Reserved

R15-2-1032. Amortization of child care facilities

A. The following definitions apply for amortization of child care facilities:

1. "Child care facility" means a facility as defined under A.R.S. § 36-881.
2. "Property" means property of a character subject to depreciation that is specifically used as an integral part of the child care facility.
3. "Employee" means any person employed by a taxpayer who, as a separate entity or in conjunction with a group of entities, operates a child care facility.
4. "Primarily" means that at least eighty percent (80%) of the children continuously attending the facility are the dependent children of employees.

B. The employer shall use the following formula to determine the eligibility of child care facility property for purposes of the amortization period:

1. Compute the total sum of the employee children in attendance for all days in the tax reporting period.
2. Divide the sum in paragraph (1) by the sum of the total daily attendance for all days in the tax reporting period.
3. The fraction that is derived must be equal to or greater than .80 for the tax reporting period in order to qualify for the 24-month amortization treatment.

C. If the 24-month amortization period is elected for property or expenditures, the taxpayer must attach to his return, for the period for which the deduction is first elected, a written statement setting forth the following information:

1. For each item of property, or for each combined item of property:
   a. A clear description of the property;
   b. The date of expenditure of the period during which the expenditures were made for the property;
   c. The date the property was placed in service;
   d. The amount of the expenditure; and
   e. The annual amortization deduction claimed with respect to the property.
2. If the 24-month amortization period is elected for property that was previously under amortization pursuant to § 188 or § 167 of the Internal Revenue Code, the taxpayer shall submit the information as required in subsection (C)(1) plus specifically set out the amount of the amortization previously taken under the Internal Revenue Code and the remaining unamortized amounts with respect to each item of property of expenditure.

D. The taxpayer shall treat as a separate item of property additions to or improvements to an existing item of amortized property except the taxpayer may treat two or more items of property as a single item of property if the items are placed in service within the same month.

E. A taxpayer may take deductions for depreciation of property in lieu of amortization deductions when the amortization election is terminated.

1. The amortization election made with respect to the item of property is terminated as of the earliest date on which:
   a. The specific use of an item of property in connection with the operation of a child care facility is discontinued.
   b. The child care facility no longer meets applicable requirements set forth in this rule.
2. Any subsequent deduction claimed for depreciation shall be computed on the adjusted basis of the property as of the termination date.

Historical Note
Adopted effective November 3, 1986 (Supp. 86-6).

R15-2-1033. Reserved

R15-2-1034. Reserved

R15-2-1035. Repealed

Historical Note
Adopted effective November 5, 1986 (Supp. 86-6).
Repealed effective January 21, 1992 (Supp. 92-1).

DEDUCTIONS AND PERSONAL EXEMPTIONS

R15-2-1041. Optional standard deduction

A. General

1. An individual under Section 43-1041 may elect to take a standard deduction in lieu of all non-business deductions.

2. The deduction in the case of single taxpayers or married taxpayers filing separately is the lesser of $500 or 10% of the Arizona adjusted gross income. The deduction in the case of married taxpayers filing a joint return is the lesser of $1,000 or 10% of their total Arizona adjusted gross income. Determination of whether an individual is married for the purpose of the preceding sentence shall be made as of the close of his taxable year unless his spouse dies during his taxable year in which case the determination shall be made as of the time of such death and an individual shall be considered as married even though living apart from his spouse unless legally separated under a decree of divorce or separate maintenance.
3. The standard deduction is not allowable:
   a. in the case of a taxable year of less than 12 months where such taxable year arises because of a change in accounting period,
   b. in cases of an estate or trust,
   c. in determination of the net income of a partnership.
4. An election to take the standard deduction is not precluded by reason of the fact that the return is made for a taxable year of less than 12 months because of the death of the taxpayer.

B. The following rules are prescribed for the manner of signifying an election by a taxpayer to take the standard deduction:
1. If a single taxpayer's Arizona adjusted gross income is $20,000 or less, he may take the optional standard deduction only by computing his tax under the table set forth in Section 43-1012. If the combined Arizona adjusted gross income of husband and wife is $40,000 or less, they may take the optional standard deduction only by computing their tax under the table set forth in Section 43-1012.
2. The election for single individuals with gross income of $20,000 or more and married couples with combined gross income of $40,000 or more and a head of a household with gross income of $20,000 or more shall be signified by the taxpayer claiming on his return the amount provided for in Section 43-1041 instead of itemizing the deductions allowed.
3. An election to compute the tax under Section 43-1012 is an election to take the standard deduction.

C. Husband and wife
1. If the husband and wife file separate returns, neither may take the standard deduction unless both of them elect to do so on their individual tax returns.
2. The restriction on the right of a married person to elect the standard deduction in his separate return is applicable with respect to the taxable years of the husband and wife ending in the same calendar year except that in the event of death of one spouse the restriction is applicable with respect to the taxable year ended with the death in the taxable year of the surviving spouse in which the death occurs. The restriction applies unless the spouses are legally separated under a decree of divorce or separate maintenance. The determination of whether an individual is married (whether or not living with his spouse) for the purpose of the allowance of the standard deduction shall be made as of the last day of such individual's taxable year unless his spouse dies during such taxable year in which event the determination shall be made as of the date of the death of such spouse.

D. Change of election to take or not to take the standard deduction
1. A change of election to take or not to take the standard deduction for any taxable year may be made before or after the time prescribed for filing the return for the taxable year. However, the period of time prescribed in which a claim for credit or refund of tax must be made is not extended by the right to effect a change of election.
2. If the spouse of the taxpayer filed a separate return for any taxable year that corresponds to the taxable year of the taxpayer, a change of election may not be made by the taxpayer unless:
   a. the spouse makes a change of election in such separate return relative to the standard deduction consistent with the change of election sought by the taxpayer, and
   b. the taxpayer and his spouse file a consent in writing to the assessment within such period of time as may be agreed to with the Department of any deficiency of either to the extent attributable to such change of election even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law. See subsection (C) of this Section.
3. A change of election for any taxable year shall not be permitted if the tax liability of the taxpayer for the taxable year or the taxpayer's spouse for the taxable year corresponding to the taxable year of the taxpayer has been compromised.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-1042. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective January 21, 1992 (Supp. 92-1).

R15-2-1043. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective January 21, 1992 (Supp. 92-1).

R15-2-1044. Reserved

R15-2-1045. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective January 21, 1992 (Supp. 92-1).

R15-2-1046. Reserved

R15-2-1047. Reserved

R15-2-1048. Reserved

R15-2-1049. Reserved

R15-2-1050. Reserved

R15-2-1051. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective January 21, 1992 (Supp. 92-1).

R15-2-1052. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective June 1, 1993 (Supp. 93-1).

R15-2-1053. Reserved

R15-2-1054. Reserved

R15-2-1055. Reserved

R15-2-1056. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective January 21, 1992 (Supp. 92-1).

R15-2-1057. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective January 21, 1992 (Supp. 92-1).

R15-2-1058. Reserved

R15-2-1059. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective January 21, 1992 (Supp. 92-1).

R15-2-1060. Reserved

R15-2-1061. Reserved

R15-2-1062. Reserved

CREDITS

R15-2-1071. Credit for Net Income Taxes Paid to Another State or Country by an Arizona Resident

A. For purposes of this rule, the following definitions apply:
1. "Composite income tax return" means a single income tax return which represents the interests of and is filed on behalf of all or a portion of the individual members of a taxable entity which normally would pass through applicable income and deductions to the individual members. A partnership or S corporation would generally be considered the type of entity to file a composite return on behalf of its members.
2. "Income subject to tax" means Arizona adjusted gross income, or the equivalent thereof, as calculated pursuant to A.R.S. § 43-1001, but not including allowable exemptions as delineated in A.R.S. § 43-1023.
3. "Net income tax" means a tax which grants deductions or exemptions from gross income. A system of taxation which assesses taxes on gross income, gross receipts, or gross dividends does not qualify for the credit. Payroll taxes withheld from income do not constitute a net income tax.
4. "State" means foreign countries and states, territories, and possessions of the United States but does not include the United States.

B. A credit against Arizona income taxes shall be allowed for Arizona residents for net income taxes imposed by and paid to another state if the following criteria are met:
1. Income taxed in Arizona is derived from sources within another state and is subject to a net income tax in the other state regardless of the residence of the taxpayer, and
2. The other state does not allow a credit to Arizona residents against the net income tax imposed on income subject to tax in Arizona and the other state.

C. The amount of credit for taxes paid to another state shall be limited to the lesser of the Arizona income tax which relates to the income subject to tax by both Arizona and the other state or the net income tax of the other state which relates to the income subject to tax by both Arizona and the other state.
1. The Arizona income tax which relates to the income subject to tax by both Arizona and the other state shall be calculated by dividing the amount of the income subject to tax in Arizona and the other state by the entire income subject to Arizona tax and multiplying the resulting ratio times the Arizona income tax liability.
2. The net income tax of the other state which relates to the income subject to tax by both Arizona and the other state shall be calculated by dividing the amount of the income subject to tax in both Arizona and the other state by the entire income subject to tax in the other state and multiplying the resulting ratio times the net income tax liability of the other state.
3. The credit is limited to income taxes and shall not be taken based on interest or penalties paid to another state. The credit shall not be applied against interest or penalties payable to Arizona.
4. The allowable credit for net income taxes paid to another state shall be applied only against Arizona income tax for the same taxable year in which the income is subject to tax in the other state.

D. A credit for taxes paid to another state shall be allowed to an individual taxpayer whose income is included in a composite income tax return, filed to the other state, if all requirements under A.R.S. § 43-1071 are met and the taxes paid to the other state are imposed upon and paid directly by the individual taxpayer and not by the entity. Taxes shall be considered to be paid directly if the individual taxpayer makes direct remittance to the other state or to the entity filing the composite income tax return, or if the entity charges the individual's loan account for the amount of the tax.

E. The taxpayer shall provide substantiation for the credit and evidence of payment.
1. No credit shall be allowed unless such taxes are paid to the other state.
2. The taxpayer shall substantiate such credit with proper documentation which shall be available to the Department upon request.
3. A copy of the tax return as submitted to the other state shall be attached to the Arizona income tax return on which the credit is claimed.

F. The taxpayer shall attach the following information to the Arizona income tax return on which a credit for tax imposed by and paid to a foreign country is claimed:
1. All information as delineated in subsection (E);
2. A copy of the pertinent provisions of the foreign law under which the tax is imposed;
3. In cases where English is not the official language of the foreign country, a translation of all required documentation; and
4. Where the tax is paid in a foreign currency, a statement substantiating the conversion rate on the date of payment.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Amended effective January 25, 1995 (Supp. 95-1).

R15-2-1072. Property Tax Credit

A. The following definitions apply for purposes of determining the eligibility for, and the amount of, a property tax credit.
1. "Adjusted gross income" means the sum of all income not specifically excluded in A.R.S. § 43-1072 whether or not subject to Arizona income tax except those items which are specifically included in income as defined in A.R.S. § 43-1072.
2. "Member of the household" means the claimant and any other person residing with the claimant in the homestead

during the taxable year, whether or not the person is related to, or a dependent of, the claimant.

B. Household income determines the eligibility for, and the amount of, a property tax credit. Household income shall be arrived at by combining the income, as separately determined, of each member of the household.

C. For purposes of arriving at adjusted gross income, the following shall apply:
1. Income from business or farm activities shall be calculated as net income or loss from business or farm activities determined in the same manner as reportable for federal income tax purposes;
2. Income from rents or royalties shall be calculated as gross income from rent or royalty activities less deductions as reportable for federal income tax purposes; and
3. Income from capital gains shall be calculated by netting capital gains and losses for each member of the household. A net loss shall be limited to $1,500.

D. Only one property tax credit is allowed per household per year for property taxes paid on the homestead or for the portion of rental payments representing property taxes paid on the homestead or both.

E. Substantiation for the credit shall be submitted to the Department as follows:
1. If the home is owned by the claimant, a copy of the property tax statement indicating the amount of taxes paid for the tax year, the property tax bill stamped paid, or copies of the cancelled checks along with a copy of the property tax bill.
2. If the claimant is a resident of a nursing home, or is a renter, a copy of the completed Arizona Form RPTC.
3. If the claimant owns a mobile home and pays rent on a mobile home space, a copy of the completed Arizona Form RPTC and a copy of the property tax statement indicating the amount of taxes paid on the mobile home for the tax year, the property tax bill stamped paid, or copies of cancelled checks along with a copy of the property tax bill.
4. If the claimant is a shareholder of a cooperative corporation or a condominium association, a statement of the claimant's pro rata share of the assessed property taxes and a copy of either:
   a. The mortgage company statement of a corporation or association indicating the total amount of property taxes paid; or
   b. A copy of the tax bill of the corporation or association stamped paid.
5. If the claimant received Title 16 Supplemental Security Income payments, a statement from the Social Security Administration indicating the amount of benefits for the current tax year.

Historical Note
Adopted effective September 30, 1993 (Supp. 93-3).

R15-2-1073. Reserved

R15-2-1074. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective January 21, 1992 (Supp. 92-1).

R15-2-1075. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective July 23, 1985 (Supp. 85-4).

NON-RESIDENTS

R15-2-1091. Income of a non-resident

A. Gross income
1. non-residents of the state are required to include in the Arizona gross income only that portion of their federal adjusted gross income which is relevant in determining the amount of net income derived from sources within this state.
2. The gross income of a non-resident of the state who is a member of a partnership, pool, or syndicate includes the member's distributive share of the net income of the partnership, pool, or syndicate in addition to any other income from sources within this state to the extent that the member's distributive share is derived from sources within this state.
3. A non-resident beneficiary of an estate or trust must include in gross income, income from the estate or trust which is deductible by the estate or trust and which is derived from sources within this state.

B. Income from sources within this state includes:
1. Income from real or tangible personal property located in this state.
2. Income from a business, trade, or profession carried on within this state.
3. Income from stocks, bonds, notes, bank deposits, and other intangible personal property having a business or taxable situs in this state.
4. Rentals or royalties for the use of or for the privilege of using in this state patents, copyrights, secret processes and formulas, good will, trade marks, trade brands, franchises, and other like property having a taxable or business situs in this state.

C. Income from real or tangible personal property. Income of a non-resident from sources within this state includes rents from real or tangible personal property in this state, gains realized from the sale or transfer of such property regardless of where the sale or transfer is consummated, and any other type of income derived from the ownership, control, or management of real and tangible personal property located in this state irrespective of whether a trade, business, or profession is carried on within this state.

D. Income from a business, trade, or profession
1. If a non-resident's business, trade, or profession is carried on entirely without the state, no portion of the gross income therefrom should be reported. If, on the other hand, the non-resident's business, trade, or profession is conducted wholly within the state, the entire gross income therefrom must be reported.
2. If the non-resident's business, trade, or profession is conducted partly within and partly without the state, and the part within the state is so separate and distinct from and unconnected with the part without the state that the net income from the part within the state can be determined without regard to the part without the state, only the gross income from the business, trade, or profession within the state should be reported. Thus, if a non-resident operates hotels both in this state and elsewhere for example, he should report only the gross income from the hotels in this state.
3. Unitary business
   a. The gross income from the entire business, trade, or profession must be reported if a business, trade, or profession carried on within this state is an integral part of a unitary business carried on both within and without the state, or if the part within the state is so connected with the part without the state that the net

income from the part within the state cannot be accurately determined independently of the part without the state. Thus, if a non-resident engaged in the business of manufacturing and selling goods for example maintains a factory outside this state and sales offices in this state or vice versa, he must report the gross income from the entire business.

b. The net income from sources within this state subject to the tax imposed by the law should be determined by subtracting from gross income the deductions allowed by the law and by apportioning the remaining net income to sources within and without the state in the manner described in paragraph (4) below.

4. Every non-resident who conducts a business, trade, or profession within and without the state of the character described in paragraph (3) above should accompany his return with a schedule of statement showing the following:
   a. The total value of real and tangible personal property
      i. Within the state
      ii. Within and without the state
   b. The total wages, salaries, and other compensation paid for personal services performed
      i. Within the state
      ii. Within and without the state
   c. The total gross sales or charges for personal services performed
      i. Within the state
      ii. Within and without the state
   d. "Total gross sales 0 within the state" shall include all sales relating to Arizona business even though the sales may be subject to confirmation at an out-of- state office and even though title may actually pass at some point outside of this state. Such sales shall include all sales where the product sold is to be used in Arizona. The value of real and tangible personal property generally should be determined by taking the average of the value of such property at the beginning of the taxable year and at the end of the taxable year. Only property used in the business, trade, or profession should be included.
   e. Generally, the amount of net income from a business, trade, or profession of the character described in paragraph (3) above which is derived from sources within the state may be determined by taking that portion of the total net income equal to the average percentage of subdivisions (a)(i), (b)(i) and (c)(i) to subdivisions (a)(ii), (b)(ii) and (c)(ii) respectively as shown by the schedule or statement accompanying the return.
   f. The use of the foregoing factors shall not be exclusive, and, if the Department believes that the net income from sources within this state cannot properly be determined by the above method, it may require additional factors to be used in making the allocation such as purchases or expenses of manufacture. If a non-resident taxpayer believes that the net income from sources within this state cannot properly be determined by the above method, he may employ another method after first receiving the consent of the Department.
   g. Wages, salaries and other compensation for personal services performed in this state
      i. The gross income from commissions earned by a non-resident traveling salesman, agent, or other employee for services performed or sales made whose compensation depends directly on the volume of business transacted by him includes that proportion of the compensation received which the volume of business transacted by that employee with this state bears to the total volume of business transacted by him within and without the state.
      ii. Non-resident actors, singers, performers, entertainers, wrestlers, boxers, etc., must include in gross income as income from sources within this state the gross amount received for performances in this state.
      iii. Non-resident attorneys, physicians, account ants, engineers, etc., even though not regularly engaged in carrying on their professions in this state, must include in gross income as income from sources within this state the entire amount of fees or compensation for services performed in this state on behalf of their clients.
      iv. If non-resident employees including officers of corporations but excluding employees mentioned in subdivision (i) above are employed continuously in this state for a definite portion of any taxable year, the gross income of the employees from sources within this state includes the total compensation for the period employed in this state.
      v. If non-resident employees are employed in this state at intervals throughout the year, as would be the case if employed in operating trains, boats, planes, motor buses, truck, etc., between this state and other states, and foreign countries, and are paid on a daily, weekly, or monthly basis; the gross income from sources within this state includes that portion of the total compensation for personal services which the total amount of working time within this state bears to the total amount of working time both within and without the state. If the employees are paid on a mileage basis, the gross income from sources within this state includes that portion of the total compensation for personal services which the number of miles traversed in this state bears to the total number of miles traversed within and without the state. If the employees are paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to this state that portion of the total compensation which is reasonably attributable to personal services performed in this state.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-1092. Income from intangible personal property

A. Income of non-residents from rentals or royalties for the use of or for the privilege of using patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property in this state is taxable if such intangible property has a business situs in this state within the meaning of subsection (C) below.

B. Income of non-residents from intangible personal property such as shares of stock in corporations, bonds, notes, bank deposits and other indebtedness is taxable as income from sources within this state only if the property has a situs for taxation in this state. However, if a non-resident buys or sells stocks, bonds, and other such property in this state or places orders with brokers in this state to buy or sell such property regularly, systematically, and continuously as to constitute doing business in this state, the profit or gain derived from such activity is taxable as income from a business carried on here irrespective of the situs of the property for taxation.

C. Business situs of intangible personal property

1. Intangible personal property has a business situs in this state if it is employed as capital in this state or possession and control of the property has been localized in connection with a business, trade, or profession in this state so that the substantial use of the property and the value attached to it become an asset of the business, trade, or profession in this state.
   Example: If a non-resident pledges stocks, bonds, or other intangible personal property in this state as security for the payment of indebtedness, taxes, etc., incurred in connection with a business in this state, the property has a business situs here. Again, if a non-resident maintains a branch office here and a bank account on which the agent in charge of the branch office may draw for the payment of expenses in connection with the activities in this state, the bank account has a business situs here.
2. If intangible personal property of a non-resident has acquired a business situs here, the entire income from the sale thereof is income from sources within this state and is taxable to the non-resident regardless of where the sale is consummated.

D. Transactions in this state extending over a period of less than six months shall not constitute doing business within this state.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-1093. Reserved

R15-2-1094. Reserved

R15-2-1095. Reserved

R15-2-1096. Credit for Income Taxes Paid by a Non-Resident

A. For purposes of this rule, the following definitions apply:

1. "Income subject to tax" means Arizona adjusted gross income, or the equivalent thereof, as calculate pursuant to A.R.S. § 43-1001, but not including allowable exemptions as delineated in A.R.S. § 43-1023.
2. "Net income tax" means a tax which grants deductions or exemptions from gross income. A system of taxation which assesses taxes on gross income, gross receipts, or gross dividends does not qualify for the credit. Payroll taxes withheld from income do not constitute a net income tax.
3. "State" means foreign countries and states, territories, and possessions of the United States but does not include the United States.

B. A credit against Arizona income taxes shall be allowed for nonresidents of Arizona who are not allowed a credit by their state of residence for taxes paid to Arizona if either of the following criteria is met:

1. The other state does not tax Arizona residents on income derived from sources within the other state.
2. The other state allows Arizona residents credit for taxes paid on income subject to tax by the other state and Arizona.

C. Nonresidents who participate in the filing of a composite income tax return, as defined in R15-2-1071, to Arizona shall not be allowed a credit for taxes paid to another state.

D. The amount of credit for taxes paid to another state shall be limited to the lesser of the Arizona income tax which relates to the income subject to tax by both Arizona and the other state or the net income of the other state which relates to the income subject to tax by both Arizona and the other state.

1. The Arizona income tax which relates to the income subject to tax by both Arizona and the other state shall be calculated by dividing the amount of the income subject to tax in both Arizona and the other state by the entire income subject to Arizona tax and multiplying the resulting ratio times the Arizona income tax liability.
2. The net income tax of the other state which relates to the income subject to tax by both Arizona and the other state shall be calculated by dividing the amount of the income subject to tax in both Arizona and the other state by the entire income subject to tax in the other state and multiplying the resulting ratio times the net income tax liability of the other state.
3. The credit is limited to income taxes and shall not be taken based on interest or penalties paid to another state. The credit shall not be applied against interest or penalties payable to Arizona.
4. The allowable credit for net income taxes paid to another state shall be applied only against Arizona income tax for the same taxable year in which the income is subject to tax in the other state.

E. Documentation to substantiate the credit shall be attached to the Arizona personal income tax return on which the credit is claimed pursuant to the provisions in R15-2-1071(E) and (F).

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Amended effective January 25, 1995 (Supp. 95-1).

R15-2-1097. Reserved

R15-2-1098. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Repealed effective January 21, 1992 (Supp. 92-1).

ARTICLE 11. CORPORATIONS

DEFINITIONS

R15-2-1101. Reserved

TAXES AND RATES

R15-2-1111. Reserved

ADJUSTMENTS TO ARIZONA GROSS INCOME

R15-2-1121. Additions to Arizona gross income: corporations

A corporation uses the taxable income as computed in accordance with the federal Internal Revenue Code as a starting point in calculating its Arizona taxable income. It is then necessary to make a series of modifications in order to reflect differences between federal and Arizona income tax laws. For subtractions required see R15-2-1122. Additions are as follows:

1. Modifications provided in Section 43-1021, paragraphs (8) through (20), (22) and (24). The additions included at Section 43-1021, paragraphs (8) through (20), (22) and

(24) are applicable to corporations as well as individuals. In the case of a corporation, the term "adjusted gross income" should be read as "taxable income" wherever it is used in Section 43-1021, paragraphs (8) through (20), (22) and (24).

2. Dividends received deduction. Any dividends received deduction claimed in determining federal taxable income under Sections 243, 244 and 245 of the federal Internal Revenue Code must be added back in determining Arizona taxable income. A subtraction is permitted under Section 43-1122, paragraph (2) for dividends received from Arizona corporations if the requirements of Section 43-1052 are met.
3. Taxes paid to other states, local governments or foreign governments. All income taxes paid to states other than Arizona, local governments outside the state of Arizona or foreign governments which were deducted in the determination of federal taxable income shall be added back in the determination of Arizona taxable income. These items are specifically not deductible for Arizona purposes.
4. Expenses related to tax-exempt income. See R15-2-1122, paragraph (5).
5. Reserved.
6. Reserved.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-1122. Subtractions from Arizona gross income: corporations

Subtractions are as follows:

1. Modifications provided in Section 43-1022, paragraphs (7) and (11) through (27) and (29), (30) and (34). In the case of a corporation the term "federal adjusted gross income" should be read as "federal taxable income" wherever it is used in Section 42-1022, paragraphs (13), (14), and (18).
2. Dividends from Arizona corporations. See R15-2-1121, paragraph (2).
3. Reserved
4. Reserved
5. Expenses related to tax-exempt income
   a. Since Section 43-1121, paragraph (4) provides for the disallowance (addition) of expenses and interest relating to tax-exempt income for Arizona purposes), Section 43-1122, paragraph (5) eliminates the potential of a double disallowance by permitting a subtraction for any such expenses disallowed by Section 265 of the federal Internal Revenue Code in determining federal taxable income.
   b. Section 43-1121, paragraph (4) and Section 43-1122, paragraph (5) are necessary since there will be cases where the exempt income as determined in accordance with the federal Internal Revenue Code will differ from exempt income as determined in accordance with the Arizona Income Tax Act of 1978. As a result the related expenses would be different for federal purposes as opposed to Arizona purposes.

   Example: Corporation A, an Arizona corporation which carries on all of its business activities within the state of Arizona, incurs indebtedness of $10,000 and with those funds purchases $10,000 of bonds issued by the state of California. Section 265 of the federal Internal Revenue Code would preclude a deduction for the interest expense on the $10,000 indebtedness since the obligation was incurred to purchase and carry an obligation the interest from which was exempt from federal income taxes. However, since for Arizona purposes, the interest income from non-Arizona state obligations is includible in income (Section 43-1021, paragraph (8)), the interest expense would be deductible and should be subtracted from federal taxable income in accordance with Section 43-1122, paragraph (5).
6. Reserved.
7. Reserved.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Amended paragraph (1) effective November 5, 1986 (Supp. 86-6).

R15-2-1123. Corporate Net Operating Loss

A. The following definitions apply for purposes of this rule:
1. "Arizona adjusted income" means Arizona gross income of the taxpayer adjusted by the additions and subtractions as delineated in A.R.S. Title 43, Chapter 11, Article 3, except as provided in subsections (B) and (E) of this rule.
2. "Arizona gross income" means federal taxable income for the taxable year.
3. "Arizona net operating loss" means Arizona adjusted income which is a negative amount.
4. "Taxable year" means taxable year as defined in statute.

B. In calculating the Arizona net operating loss, the taxpayer shall not include:
1. An Arizona net operating loss carryforward,
2. A net operating loss incurred by the taxpayer prior to doing business in Arizona; or,
3. A net operating loss from a prior period if such loss was incurred by another corporation or group of corporations, prior to a merger, consolidation, or reorganization with the taxpayer, to the extent that Arizona adjusted income, earned after the merger, consolidation, or reorganization, is not attributable to the same entity which incurred the net operating loss.
   a. A net operating loss, incurred by a separate corporation required to file a combined return, may be carried forward against that portion of the combined income which is related to the former separate corporation.
   b. The portion of any combined net operating loss which is related to a separate corporation which is determined to not be includible in the unitary group may be carried forward against income of that corporation computed on a separate basis.
   c. The portion of the combined income or loss which is related to the separate corporation shall be determined by computing a ratio based on the property, payroll, and sales factors of the separate corporation to the combined group's total property, payroll, and sales factors. This ratio shall be multiplied by the combined net income or loss subject to apportionment resulting in the net income or loss attributable to the separate corporation.
   d. If the separate corporation operates both within and without Arizona, the Arizona portion of the separate corporation's income or loss shall be computed by multiplying the income attributable to that separate corporation by the corporation's ratio of Arizona property, payroll, and sales factors to the corporation's total property payroll and sales factors plus any income or loss allocable to Arizona.

C. An Arizona net operating loss may be carried forward to each of the five succeeding taxable years of the taxpayer.
1. An Arizona net operating loss, or any part thereof, which is not used during the five succeeding taxable years, shall be lost to the taxpayer.
2. A taxpayer shall not carryback an Arizona net operating loss.
3. Arizona net operating loss carryforwards shall be reduced by the amount of Arizona adjusted income incurred in any of the five succeeding taxable years.
4. For purposes of determining the five-year carryforward limitation, each Arizona net operating loss carryover shall be applied separately to Arizona adjusted income in the order in which the Arizona net operating loss was incurred.
5. The aggregate of all Arizona net operating loss carryforwards meeting the five-year carryforward limitation may be applied to any Arizona adjusted income incurred in a taxable year.

D. A taxpayer claiming an Arizona net operating loss carryforward shall file a statement with the corporate income tax return for the taxable year in which the Arizona net operating loss carryforward is claimed. The statement shall include a detailed schedule showing the computation of the Arizona net operating loss carryforward.

E. In calculating and applying an Arizona net operating loss, a multistate taxpayer shall be subject to:
1. The provisions of A.R.S. Title 43, Chapter 11, Article 4;
2. The statutory provisions regarding the Arizona net operating loss; and
3. The provisions of this rule.

Historical Note
Adopted effective January 26, 1995 (Supp. 95-1).

R15-2-1124. Reserved

R15-2-1125. Domestic International Sales Corporation (DISC)

A. For Arizona state income tax purposes, a DISC will be treated as an ordinary corporation and will be required to file an Arizona Corporation Income Tax Return. A corporation which reports as a DISC for federal income tax purposes is taxable on its net income as a separate entity without reference to its distributions to stockholders. Reference Sections 43-1121(5) and 43-1022(27).

B. Shareholders are taxable on the distributed portion of the income earned by the DISC. These distributions are considered dividends to the shareholders. The undistributed portion of the DISC income will be taxable to its shareholders upon distribution in cash or property.

C. Dividends received by any shareholder from a corporation which does 50% or more of its business in this state, although considered taxable and reportable on the shareholder's tax return, are deductible in full on the shareholder's return.

D. No federal income tax deduction will be allowed to a DISC, since the DISC is not the taxpaying entity under federal law, and therefore does not pay or accrue any federal income taxes.

E. For those DISC not dealing at arm's length, the Department may review the transactions between the DISC and its shareholders and make such adjustments under Sections 43-941 and 43-942 as it deems necessary to properly reflect Arizona income.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-1126. Reserved

R15-2-1127. Reserved

R15-2-1128. Dividends Received from Arizona Corporations

A. Cash dividends received from a corporation, which are paid from surplus accumulated after January 1, 1933, may be subtracted by the recipient corporation if the corporation paying the dividend meets the following requirements:
1. The corporation paying the dividend is required to and does file an Arizona income tax return for the taxable year preceding such payment;
2. The income of the corporation paying the dividend is subject to Arizona income tax for the taxable year preceding the payment of the dividend; and
3. The corporation paying the dividend attributes 50% or more of its net income to Arizona for the taxable year preceding such payment.

B. The recipient corporation shall report all dividends in full on its income tax return, even though the dividends or a portion thereof may qualify as a subtraction.

C. The determination that 50% or more of the net income of a corporation is attributable to Arizona shall be shown by the apportionment ratio, as reported on the original return, unless it is determined by the Department that this ratio does not fairly represent the extent of the corporation's business activity in Arizona.

D. The determination that 50% or more of the combined net income of a unitary group of corporations is attributable to Arizona shall be determined in the same manner as for a single corporation.
1. All intercompany dividends shall be eliminated in the computation of the combined net income of a unitary group of corporations and shall not be considered in the determination of whether 50% or more of the combined net income of the unitary group is attributable to Arizona.
2. Pursuant to the provisions of this rule, if the combined apportionment ratio is 50 percent or more, dividends paid by all of the corporations included in the combined return may be subtracted by the recipient corporate shareholders that are not members of the unitary group. If the apportionment ratio is less than 50%, no dividends paid by members of the combined group shall be allowed as a subtraction under A.R.S. § 43-1128.

Historical Note
Adopted effective June 1, 1993 (Supp. 93-2).

UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT (UDITPA)

R15-2-1131. Definitions

A. Business and non-business income defined. "Business income" is income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. Parts or components of the taxpayer's regular trade or business operations are limited to that business which is subject to the tax imposed by and computed pursuant to the Internal Revenue Code, except as provided in A.R.S. § 43-1132. In essence, all income from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration, the income of the taxpayer is business income unless clearly classified as non-business income.
"Non-business income" means all income other than business income.

The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., is of no aid in determining whether income is business or non-business income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is "business income" or "non-business income" is the identification of the transactions and activity which are the elements of a particular trade or business. In general, all transactions and activities of the taxpayer which are dependent upon or contribute to the operations of the taxpayer's unitary business as a whole constitute the taxpayer's trade or business and shall be transactions and activity arising in the regular course of, and shall constitute integral parts of, a trade or business.

B. Business and non-business income: application of definitions.

1. The following are rules for determining whether particular income is business or non-business income:
   a. Rents from real and tangible personal property. Rental income from real and tangible personal property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is attendant thereto and therefore is includible in the property factor under R15-2-1140.
   b. Gains or losses from sales of assets. gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if such property was utilized for the production of non-business income or otherwise was removed from the property factor for a substantial period of time before the year of its sale, exchange or other disposition, the gain or loss will constitute non-business income. Five years or more shall be considered a substantial period of time.
   c. Interest. Interest income is business income where the intangible with respect to which the interest is received arises out of or is created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to the taxpayer's trade or business operations.
   d. Dividends. Dividends shall be business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to such trade or business operations.
   e. Royalties. Patent and copyright royalties and other royalties and licensing fees are business income where the patent or copyright with respect to which the royalties and other royalties and licensing fees were received arose out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is related to such trade or business operations.

C. Proration of deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of non-business income. In some cases an allowable deduction may be applicable to the business incomes of more than one trade or business and/or to several items of non-business income. In such cases the deduction shall be prorated among such trades or businesses and such items of non-business income in a manner which fairly distributes the deduction among the classes of income to which it is applicable.

D. Consistency and uniformity in reporting.

1. Year-to-year consistency. In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
2. State-to-state uniformity. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

E. Two or more businesses of a single taxpayer. A taxpayer may have more than one "trade or business". In such cases, it is necessary to determine the business income attributable to each separate trade or business. The income of each business is then apportioned by an apportionment formula which takes into consideration the instate and outstate factors which relate to the trade or business the income of which is being apportioned.

1. Single unitary trade or business and a combined report. The determination of whether the activities of the taxpayer constitute a single trade or business or more than one trade or business will turn on the facts in each case. In general, the activities of the taxpayer will be considered a single unitary business if there is evidence to indicate that the basic operations of the components under consideration are integrated and interdependent.

   The following definition of a single unitary business is based on economic substance and not form. Therefore, a unitary business may consist of one corporation or many corporations. If the unitary business consists of more than one corporation, a combined report by the entities comprising the unitary business is required by the Department. Components of the combined report must reconcile accounting periods and systems if they are not compatible. See R15-2-1132(E) and (F) for methods of filing a combined report and reconciling incompatible accounting periods. The entities comprising the unitary business must be united by a bond of direct or indirect ownership or control of more than fifty percent (50%) of the voting stock of a subsidiary corporation. There must be common management of the component parts or entities. At least some part of the unitary business must be conducted in Arizona.

   The fundamental reason for defining a business as unitary is that its components in various states are so tied together at the basic operational level that it is truly difficult to determine the state in which profits are actually earned. Centralized top-level management, financing, accounting, insurance and benefit programs or overhead functions by a home office are not sufficient characteristics in themselves for a business to be unitary without further analysis of the basic operations of component businesses.

   An entity or group of entities is not a unitary business for apportionment purposes unless there is actual substantial interdependence and integration of the basic operations of

the business carried on in more than one taxing jurisdiction. The potential to operate a component as part of the unitary business is not dispositive. In the manufacturing, producing or mercantile type of business, a substantial transfer of material, products, goods, technological data, processes, machinery, and equipment between the branches, divisions, subsidiaries or affiliates is required for an entity or group of entities to be defined as a unitary business.

A transfer of over twenty percent (20%) of the total goods annually manufactured, produced or purchased as inventory for processing and/or sale by the transferor, or over twenty percent (20%) of the total goods annually acquired for processing and/or sale by the transferee would be presumptive evidence of a unitary business. A smaller percentage of goods transferred may be indicative of a unitary business depending upon the presence of other characteristics indicating operational integration.

In a unitary service business, the operations of the various component parts or entities of the business are integrated and interrelated by their involvement with the central office or parent in delivering substantially the same service. The day-to-day operations of these components use the same procedures and technologies which are developed, organized, purchased and/or prescribed by the central office or parent. There usually is an exchange of employees among the component parts and centralized training of employees.

Generally speaking, a conglomerate composed of diverse businesses is not a single unitary business. However, a line or line of business within the conglomerate may be a unitary business if the operations of the components of the line are integrated and interrelated as described herein. The cost of centralized services and functions performed by the parent corporation for diverse subsidiaries may be specifically allocated to the respective subsidiaries.

While common ownership, common management and reconciled accounting systems of components are necessary threshold characteristics for a business to be considered a single unitary business, the presence of these three characteristics is not sufficient without evidence of substantial operational integration. Some of the factors of a single unitary business which indicate basic operational integration are:

1. The same or similar business conducted by components;
2. Vertical development of a product by components, i.e., manufacturing, distribution and sales;
3. Horizontal development of a product by components, i.e., sales, service, and repair financing;
4. Transfer of materials, goods, products, and technological data and processes, between components;
5. Sharing of assets by components;
6. Sharing or exchanging of operational employees by components;
7. Centralized training of employees;
8. Centralized mass purchasing of inventory, materials, equipment, technology, etc.;
9. Centralized development and distribution of technology relating to the on-going day to day operations of the components;
10. Use of common trademark or logo at the basic operational level, centralized advertising with impact at the basic operational level;
11. Exclusive sales-purchase agreements between components;
12. Price differentials between components as compared to unrelated businesses;
13. Sales or leases between components;
14. Other contributions between components at the basic operational level. All of the above factors need not be present in every unitary business, but factors indicating substantial integration at the basic operational level should be evident.

Historical Note

Adopted effective February 7, 1986 (Supp. 86-1).

R15-2-1132. Taxpayers liable: definitions

A. "Taxpayer" shall mean any person subject to a tax imposed by Title 43, Arizona Revised Statutes, but in no case shall it include the United States, this state, counties, cities, towns, school districts or other political subdivisions or units of this state or federal government. "Person" includes individuals, fiduciaries, partnerships, and corporations.

B. "Apportionment" refers to the division of business income between states by the use of a formula containing apportionment factors. If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business which is derived from activities within this state shall be determined by apportionment.

C. "Allocation" refers to the assignment of non-business income to a particular state. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its non-business income or loss within or without this state in accordance with A.R.S. § 43-1135 through 43-1138.

D. "Business activity" refers to the transactions and activity occurring in the regular course of a taxpayer's unitary trade or business.

E. "Combined report". If a particular unitary trade or business is carried on by a taxpayer and one or more affiliated taxpayers united by a bond of direct or indirect ownership or control of more than fifty percent (50%) and a part of the business is conducted in Arizona by one or more of the members of the group, the business income attributable to such member or members shall be apportioned by multiplying the group's unitary business income by the average of the property, payroll and sales factors. Those factors are determined by dividing the Arizona property, payroll and sales figures by the total property, payroll and sales figures of all the members of the unitary group. The property, payroll and sales factors are to be determined in accordance with the rules described in R15-2-1140 through R15-2-1147. The extent of the unitary business or group is limited to that business which is subject to the tax imposed by and computed pursuant to the Internal Revenue Code, except as provided in A.R.S. § 43-1132.

F. Unitary business group; members having different accounting periods.

Utilization of the combined method of apportionment will ordinarily require that unitary income be determined generally on the same accounting period for all members. Where the members' accounting periods differ, the parent's accounting period will be utilized. Where there is no common parent, the income of the group's members shall be determined generally on the basis of the accounting period of the member filing an Arizona return who is expected to have, on a recurring basis, the greater (or greatest) liability for Arizona income tax. In complying with this requirement, any particular member, in

determining the proper income to be included in the appropriate accounting period, may reflect income and related deductions as may (or may not) be allocable to Arizona in accordance with the actual book or accounting entries for the relevant period. On the other hand, the member may determine income based on the number of months falling within the required common accounting period. For example, if one member utilizes a calendar year, and the common accounting period ends October 31, 1981, the member will include 2/12 of the income for the year ended December 31, 1980, and 10/12 of the income for the year ended December 31, 1981. Estimates may be necessary where this proration method involves a member's year which ends subsequent to the common accounting period.

G. Unitary business income; eliminations; intercompany transactions.

Elimination of income and deduction items arising from transactions between members of the group must be done whenever necessary to avoid distortion of the group's income, the denominators used by all members of the group in calculating apportionment factors, or the numerators used by any particular member of the group in calculating its apportionment factors.

H. Consistency and uniformity in reporting.

1. Year-to-year consistency. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or non-business income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
2. State-to-state uniformity. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the classification of income as business or non-business income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

Historical Note
Adopted effective February 7, 1986 (Supp. 86-1).

R15-2-1133. Taxable in another state: in general

A. The taxpayer shall be subject to the allocation and apportionment provisions of Title 43, Article 4 of the Arizona Revised Statutes if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if such taxpayer, by reason of such business activity (that is, the transactions and activity occurring in the regular course of a particular trade or business), is taxable in another state.

1. A taxpayer shall be taxable within another state if it meets either one of two tests:
   a. If by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified, namely: A net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
   b. If by reason of such business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes such a tax on the taxpayer.
2. A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in that other state pertaining to the production of non-business income or business activities relating to a separate trade or business.

B. Taxable in another state: when a corporation is "Subject to" a tax. A taxpayer is "subject to" one of the taxes specified in R15-2-1133 if it carries on business activities in a state and that state imposes such a tax thereon. Any taxpayer which asserts that it is subject to one of the taxes specified in another state shall furnish to the Department of this state upon its request evidence to support that assertion. The Department of this state may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the laws of the other state; the taxpayer's failure to produce such proof may be taken into account in determining whether the taxpayer in fact is subject in the other state to one of the taxes specified in this regulation.

1. If the taxpayer voluntarily files and pays one or more of such taxes when not required to do so by the laws of the other state or pays a minimal fee for qualification for organization or for the privilege of doing business in that state but:
   a. does not actually engage in business activity in that state, or
   b. does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not "subject to" one of the specified taxes within the meaning of this regulation.
2. The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so. In states which do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated which may be considered as basically revenue raising rather than regulatory measures shall be considered in determining whether the taxpayer is "subject to" one of the taxes in another state.

C. Taxable in another state: When a state has jurisdiction to subject a taxpayer to a net income tax. The second test in R15-2-1133(A)(1)(b) applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of such business activity. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U.S.C.A. §§ 381-384.

Historical Note
Adopted effective February 7, 1986 (Supp. 86-1).

R15-2-1134. Reserved

R15-2-1135. Reserved

R15-2-1136. Reserved

R15-2-1137. Reserved

R15-2-1138. Reserved

R15-2-1139. Apportionment formula

All business income of each trade or business of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in A.R.S. § 43-1139. The elements of the apportionment formula are the property factor, the payroll factor and the sales factor of the trade or business of the taxpayer.

Historical Note
Adopted effective February 7, 1986 (Supp. 86-1).

R15-2-1140. Property factor

Property factor: In General. The property factor of the apportionment formula for each trade or business of the taxpayer shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of such trade or business. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency. Property used in connection with the production of non-business income shall be excluded from the property factor. Property used both in the regular course of taxpayer's trade or business and in the production of non-business income shall be included in the factor only to the extent the property is used in the regular course of taxpayer's trade or business. The method of determining that portion of the value to be included in the factor will depend upon the facts of each case. The property factor shall include the average value of property includable in the factor.

1. Property factor: Property used for the production of business income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, (except inventoriable goods in process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of non-business income, its sale, or the lapse of an extended period of time (normally, five years) during which the property is held for sale.
2. Property factor: consistency and uniformity in reporting.
   a. Year-to-year consistency: In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
   b. State-to-state uniformity: If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.
3. Property factor: numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at its destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.
4. Property factor: denominator. The denominator of the property factor is the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the tax period. The term "all of the taxpayer's real and tangible personal property" is limited to all of the property owned or rented by the unitary business, which business is subject to the tax imposed by and computed pursuant to the Internal Revenue Code, except as provided in A.R.S. § 43-1132.

Historical Note

Adopted effective February 7, 1986 (Supp. 86-1).

R15-2-1141. Property factor: valuation of owned property

Property owned by the taxpayer shall be valued at its original cost. As a general rule, "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc. If the original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer. Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes. Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.

1. Property factor: valuation of rented property. Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income; accordingly, there is no reduction in its value.
   "Annual rental rate" is the amount paid as rental for property for a 12-month period (i.e., the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis. "Annual rent" is the actual

sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

a. Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise;
b. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.
c. "Annual rent" does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

2. Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the property factor.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6). Former Section R15-2-1141 repealed, new Section R15-2-1141 adopted effective February 7, 1986 (Supp. 86-1).

R15-2-1142. Property factor: averaging property values

As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the Department may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property.

Historical Note
Adopted effective February 7, 1986 (Supp. 86-1).

R15-2-1143. Payroll factor: in general

A. The payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

1. The total amount "paid" to employees shall be determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes. The compensation of any employee on account of activities which are connected with the production of non-business income shall be excluded from the factor.
2. The term "compensation" shall mean wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services provided that such amounts constitute income to the recipient under the federal Internal Revenue Code.
3. The term "employee" shall mean:
   a. any officer of a corporation; or
   b. any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act; except that, since certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for the purposes of this regulation.

B. Consistency and uniformity in reporting.

1. Year-to-year consistency. In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
2. State-to-state uniformity. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

C. Payroll factor: denominator. The denominator of the payroll factor is the total compensation paid everywhere by the unitary business, which business is limited to that subject to the tax imposed by and computed pursuant to the Internal Revenue Code during the tax period, except as provided in A.R.S. § 43-1132. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is not taxable is included in the denominator of the payroll factor.

D. Payroll factor: numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

Historical Note
Adopted effective February 7, 1986 (Supp. 86-1).

R15-2-1144. Payroll factor: compensation paid in this state

A. Compensation is paid in this state if any one of the following tests applied consecutively, are met:
1. The employee's service is performed entirely within the state.
2. The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.
3. If the employee's services are performed both within and without this state, the employee's compensation shall be attributed to this state:
   a. if the employee's base of operations is in this state; or
   b. if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or
   c. if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

B. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

C. The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points.

Historical Note
Adopted effective February 7, 1986 (Supp. 86-1).

R15-2-1145. Sales factor: in general

A. The term "sales" shall mean all gross receipts of the taxpayer not allocated pursuant to R15-2-1134 through R15-2-1138. Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term "sales" means all gross receipts derived by the taxpayer from a transactions and activity in the regular course of such unitary trade or business, which business is limited to that business subject to the tax imposed by and computed pursuant to the Internal Revenue Code. The following are rules for determining "sales" in various situations:
1. In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.
2. In the case of cost-plus-fixed-fee contracts, such as the operation of government-owned plant for a fee, "sales" includes the entire reimbursed cost plus the fee.
3. In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of such services including fees, commission, and similar items.
4. In the case of a taxpayer engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.
5. In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.
6. If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute "sales." For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.
7. In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business.

B. Consistency and uniformity in reporting.
1. Year-to-year consistency. In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
2. State-to-state uniformity. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

C. Sales factor: denominator. The denominator of the sales factor shall include the total domestic gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded pursuant to R15-2-1148(D). The unitary trade or business from which total gross receipts are derived is limited to that business subject to the tax imposed by and computed pursuant to the Internal Revenue Code, except as provided in A.R.S. § 43-1132. Gross receipts from sales of tangible personal property which are not taxable in any state having jurisdiction to tax shall be excluded from the denominator.

D. Sales factor: numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to such gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

Historical Note
Adopted effective February 7, 1986 (Supp. 86-1).

R15-2-1146. Sales factor: tangible personal property

A. Sales of tangible personal property in this state.
1. Gross receipts from sales of tangible personal property (except sales to the United States Government) are in this state:

a. if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or
b. if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

2. Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.
3. Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.
4. The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.
5. When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.
6. If the taxpayer is not taxable in the state of the purchaser, the sale is attributable to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.
7. If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:
   a. If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.
   b. If the taxpayer is not taxable in the state from which the third party ships property, then the sale is in this state.

B. Sales factor: Sales of tangible personal property to United States Government in this state. Gross receipts from sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

Historical Note
Adopted effective February 7, 1986 (Supp. 86-1).

R15-2-1147. Sales other than sales of tangible personal property in this state

This Section provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States Government); under this Section gross receipts are attributed to this state if the income-producing activity which gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income-producing activity is performed within and without this state but the greater proportion of the income-producing activity is performed in this state, based on costs of performance.

1. income-producing activity: Defined. The term "income-producing activity" shall apply to each separate item of income and shall mean the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Such activity shall not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, "income-producing activity" shall include but is not limited to the following:
   a. The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service.
   b. The sale, rental, leasing, licensing or other use of real property.
   c. The rental, leasing, licensing or other use of tangible personal property.
   d. The sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income-producing activity.
2. Costs of performance: Defined. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.
3. In general. Receipts (other than from sales of tangible personal property) in respect to a particular income-producing activity are in this state if:
   a. the income-producing activity is performed wholly both in this state; or
   b. the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.
4. Specific rules. The following are specific rules for determining when receipts from the income-producing activities described below are in this state:
   a. Real property. Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.
   b. Tangible personal property. Gross receipts from the rental, lease or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income- producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period.
   c. Personal services. Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of such services shall be attributable to this state only if a greater proportion of the services was performed in the state, based on costs of performance. Usually, where services are performed

partly within and partly without this state, the services performed in each state will constitute a separate income-producing activity; in such case the gross receipts for the performance of services attributable to this state shall be measured by the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example time expended in negotiating the contract, is excluded from the computations.

Historical Note
Adopted effective February 7, 1986 (Supp. 86-1).

R15-2-1148. Apportionment by Department

A. In general, if the allocation and apportionment provisions do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the Department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:
1. Separate accounting;
2. The exclusion of any one or more of the factors;
3. The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
4. The denominator of the apportionment ratio should correspond to the number of factors utilized to fairly represent the taxpayer's business activity in this state. For example, if only two factors are used, the denominator is two.
5. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

B. This Section permits a departure from the allocation and apportionment provisions only in limited and specific cases. It may be invoked only in specific cases where unusual fact situations produce incongruous results under the apportionment and allocation provisions.

C. Special rules: property factor. The following special rules are established in respect to the property factor of the apportionment formula:
1. If the subrents taken into account in determining the net annual rental rate produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the Department or requested by the taxpayer. In no case, however, shall such value be less than an amount which bears the same ratio to the annual rental rate paid by the taxpayer for such property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.
2. If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for such property shall be determined on the basis of a reasonable market rental rate for such property.

D. Special rules: sales factor. The following special rules are established in respect to the sales factor of the apportionment formula:
1. Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, such gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.
2. Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless such exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, business automobiles, etc.
3. Where the income-producing activity in respect to business income from intangible personal property can be readily identified, such income is included in the denominator of the sales factor and, if the income-producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income-producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property and income from the sale, licensing or other use of intangible personal property.
   Where business income from intangible property cannot readily be attributed to any particular income-producing activity of the taxpayer, such income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.
4. Items of income which are not subject to taxation by A.R.S. Title 43 or judicial decision shall be excluded from the sales factor. Examples of such items include controlled corporation dividends, gross-up dividends, Subpart F dividends and interest from federal obligations.

Historical Note
Adopted effective February 7, 1986 (Supp. 86-1).

CESSATION OF CORPORATE ACTIVITIES

R15-2-1151. Reserved

R15-2-1152. Reserved

R15-2-1153. Reserved

R15-2-1154. Reserved

R15-2-1155. Reserved

R15-2-1156. Reserved

R15-2-1157. Reserved

CREDITS

R15-2-1161. Reserved

R15-2-1162. Reserved

R15-2-1163. Reserved

ARTICLE 12. TAX EXEMPT ORGANIZATIONS

ORGANIZATIONS EXEMPT FROM TAX

R15-2-1201. Reserved

R15-2-1202. Feeder organization not exempt from tax

A. For purposes of Section 43-1202, all circumstances must be considered including the size and extent of the trade or business as well as the size the extent of those activities of that organization that are specified in the applicable paragraph of Section 43-1201 in determining the primary purpose of an organization. If a subsidiary organization of a tax-exempt organization would itself be exempt on the ground that the activities of the organization are an integral part of the exempt activities of the parent organization, the exemption will not be lost because, as a matter of accounting between the two organizations, the subsidiary derives a profit from the dealings with the parent organization; for example, a subsidiary organization that is operated for the sole purpose of furnishing electric power used by the parent organization which is a tax-exempt educational organization in carrying on its educational activities. However, the subsidiary organization is not exempt from tax if it is operated for the primary purpose of carrying on a trade or business which would be an unrelated trade or business, unrelated to exempt activities, if regularly carried on by the parent organization. For example, if a subsidiary organization is operated primarily for the purpose of furnishing electric power to consumers other than the parent organization and the subsidiary organizations of the tax-exempt parent, it is not exempt since such business would be an unrelated trade or business if regularly carried on by the parent organization. Similarly, if the subsidiary is owned by several unrelated exempt organizations and is operated for the purpose of furnishing electric power to each of them, it is not exempt since such business would be an unrelated trade or business if regularly carried on by any one of the tax-exempt organizations.

B. In certain cases, an organization that carries on a trade or business for profit but is not operated for the primary purpose of carrying on such trade or business is subject to tax under Section 43-1231.

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6).

DENIAL OF EXEMPT STATUS

R15-2-1211. Reserved

R15-2-1212. Denial of exemption to organizations engaged in prohibited transactions

A. The prohibited transactions enumerated in Section 43-1213 are in addition to and not in limitation of the restrictions contained in Section 43-1201, paragraph (4). Even though an organization has not engaged in any of the prohibited transactions referred to in Section 43-1213, it still may not qualify for tax exemption in view of the general provisions of Section 43-1201.

B. An organization described in Section 43-1201 which has engaged in any prohibited transaction after December 31, 1953, shall not be exempt from taxation under Section 43-1201 for any taxable year subsequent to the taxable year in which there is mailed to it a notice in writing by the Department that it has engaged in such prohibited transaction. Such notification by the Department shall be by registered mail to the last known address of the organization. However, notwithstanding the requirement of notification by the Department, exemption shall be denied with respect to any taxable year if such organization during or prior to such taxable year commenced the prohibited transaction with the purpose of diverting income or corpus from the exempt purposes and such transaction involved a substantial part of the income or corpus of such organization. The term, "taxable year" for the purpose of this section means the established annual accounting period of the organization; or if the organization does not have such an established annual accounting period, the "taxable year" of the organization means the calendar year.

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-1213. Reserved

R15-2-1214. Denial of exemption under Section 43-1214 in the case of certain organizations accumulating incomes

A. Any organization described in Section 43-1201 other than an organization described in Section 43-1215 shall not be exempt under Section 43-1201 if the amounts accumulated out of income during the taxable year or any prior taxable years but not actually paid out for exempt purposes by the end of the taxable year are unreasonable. Amounts accumulated from income become unreasonable when more income is accumulated than is needed or when the duration of the accumulation is longer than is needed in order to carry out the purpose constituting the basis for the exemption of the organization. Furthermore, an organization shall not be exempt under Section 43-1201 if amounts accumulated from income are used to a substantial degree for purposes or functions other than those constituting the basis for the organization's exemption or if such amounts are invested in such a manner as to jeopardize the carrying out of the purpose of function constituting the basis for the exemption of the organization.

B. The term, "income", for the purpose of Section 43-1214 means gains, profits, and income determined under the principles applicable in determining the earnings or profits of a corporation. The amount accumulated from income during the taxable year or any prior taxable year shall be determined under the principles applicable in determining the accumulated earnings or profits of a corporation. In determining the reasonableness of an accumulation from income, the following will be disregarded:

1. The accumulation of gain on the sale or exchange of a donated asset to the extent that such gain represents the excess of the fair market value of such assets when acquired by the organization over the substituted basis in the hands of the organization.
2. The accumulation of gain on the sale or exchange of property held for the production of investment income such as dividends, interest, and rents where the proceeds of that sale or exchange are within a reasonable time reinvested in property acquired and held in good faith for the production of investment income.

C. Whether the conditions specified in Section 43-1214 are present in any case must be determined from all the facts. The conditions specified in Section 43-1214 may result from the use of only one organization or of a chain of two or more organizations.

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-1215. Repealed

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6).
Section repealed by final rulemaking at 5 A.A.R. 2164, effective June 16, 1999 (Supp. 99-2).

R15-2-1216. Future status of organization denied exemption

A. Any organization denied exemption under Section 43-1201 by reason of the provisions of Section 43-1211 may file a claim for exemption with the Department in any taxable year following the taxable year in which notice of denial of exemption was issued. The claim must contain or have attached in addition to the information generally required of an organization claiming exemption under Section 43-1201 an affidavit that the organization has ceased engaging in any transactions prohibited by Section 43-1213 and will not knowingly engage in a prohibited transaction prepared by a principal officer of that organization authorized to make that affidavit.

B. If the Department has determined that such organization has ceased engaging in any transactions prohibited by Section 43-1213 and the Department is satisfied that such organization will not knowingly again engage in a prohibited transaction and that the organization also satisfies all other standards under Section 43-1201, it shall notify the organization in writing. The organization in such case will be exempt subject to the provisions of Sections 43-1201 and 43-1211 with respect to the taxable years subsequent to the taxable year in which such claim is filed. Section 43-1216 contemplates that an organization denied exemption because of the terms of such section will be subject to taxation for at least one full taxable year. The term "taxable year" for the purposes of this section means the established annual accounting period of the organization; or if the organization does not have an established annual accounting period, the "taxable year" of the organization means the calendar year.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-1217. Repealed

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).
Section repealed by final rulemaking at 5 A.A.R. 2164, effective June 16, 1999 (Supp. 99-2).

TAXATION OF UNRELATED BUSINESS INCOME OF CERTAIN TAX EXEMPT ORGANIZATIONS

R15-2-1231. Reserved

RETURNS OF EXEMPT ORGANIZATIONS

R15-2-1241. Reserved

R15-2-1242. Returns of tax exempt organizations

A. Requirement of annual returns. Every organization except those set forth in Section 43-1242(A), exempt from tax under Section 43-1201 having gross income in excess of $25,000 irrespective of whether it is chartered by, or affiliated or associated with any central parent, or any other organization except organizations specifically exempted from filing annual returns shall file annually with the Department a return of information specifically stating the items of gross income, receipts, and disbursements, and such other information as may be prescribed by the Department in the instructions on the form or issued by it therewith. Returns shall be on the basis of the established annual accounting period of the organization. Where the organization does not have such an established accounting period, such returns shall be on the basis of the calendar year.

B. Date for filing annual returns. The annual returns of information shall be filed on or before the 15th day of the fifth full calendar month following the close of the period for which the return is required to be filed.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

ARTICLE 13. ESTATES AND TRUSTS

DEFINITIONS

R15-2-1301. Reserved

IMPOSITION OF TAX ON ESTATES AND TRUSTS

R15-2-1311. Reserved

R15-2-1312. Reserved

R15-2-1313. Taxable income of estates and trusts

A. In the case of an estate if the decedent was a resident of this state at the time of death, the estate is taxable on the entire net income of the estate as computed in Article 3 of Chapter 13. In the case of trusts if the fiduciary is a resident of this state or if there are two or more fiduciaries, if all the fiduciaries are residents of this state, the trust is taxable on all of the net income of the trust as specified regardless of the source of the income and regardless of the residence of the settler and the beneficiaries. Similarly, if all the beneficiaries are residents of this state, a trust is taxable on all of the net income of the trust in excess of the exemptions remaining after subtracting the deductions allowed regardless of the source of the income and regardless of the residence of the settler and the fiduciary or fiduciaries.

B. If the settler, the fiduciary, and the beneficiaries are all non-residents of this state, only income from real or personal property located in this state, business carried on within this state, and intangible personal property having a business or taxable situs in this state is taxable.

In computing the net income from these sources, only the gross income from these sources should be considered. From such gross income, the deductions allowed by law should be subtracted. The amount remaining is taxable net income of the estate or trust to which the rates of tax specified in Section 43-1011 apply.

C. If there are two or more fiduciaries of a trust, and one or more are residents and one or more are non-residents, and if the settlor was a non-resident and all the beneficiaries are non-residents, the trust is taxable upon:

1. All net income from business carried on within this state, from real or tangible personal property located in this state, and from intangible personal property having a business or taxable situs in this state; and
2. That portion of the net income from all other sources which the number of fiduciaries who are residents of this state bears to the total number of fiduciaries.

D. If one or more of the beneficiaries of a trust are residents and one or more are non-residents, and if the settlor was a non-resident and the fiduciaries are non-residents, the trust is taxable upon:

1. All net income from real and tangible personal property located in this state, from business carried on within this state and from intangible personal property having a business or taxable situs in this state; and
2. That portion of all net income from all other sources which eventually is to be distributed to the beneficiaries who are residents of this state.

Historical Note
Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-1314. Reserved

R15-2-1315. Reserved

ADJUSTMENTS TO ARIZONA GROSS INCOME

R15-2-1331. Reserved

R15-2-1332. Reserved

ESTATE OR TRUST INCOME CURRENTLY DISTRIBUTABLE OR PROPERTY PAID OR CREDITED

R15-2-1341. Reserved

R15-2-1342. Reserved

R15-2-1343. Reserved

R15-2-1344. Reserved

R15-2-1345. Reserved

R15-2-1346. Reserved

LIABILITY OF FIDUCIARY

R15-2-1361. Reserved

R15-2-1362. Reserved

R15-2-1363. Reserved

R15-2-1364. Reserved

ARTICLE 14. PARTNERSHIPS

DEFINITIONS

R15-2-1401. Reserved

TAXATION OF PARTNERSHIPS

R15-2-1411. Partnerships

Partnerships as such are not subject to the income tax imposed by the Act but are required to make returns of income for information purposes.

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6).

R15-2-1412. Reserved

R15-2-1413. Distributive shares of partners

A. Each partner is required to include in his return for his taxable year within which or with which the taxable year of the partnership ends, whether or not distributed, the items specifically set forth in Section 43-1412.

B. If separate returns are made by a husband and wife, and only one spouse is a member of a partnership, the part of the distributive share of the gains and losses of the partnership from sales or exchanges of capital assets or the part of their distributive share of ordinary net income or ordinary net loss derived from community property should be reported by the husband and by the wife in equal proportions.

Historical Note

Adopted effective December 22, 1981 (Supp. 81-6).

TITLE 15. REVENUE

CHAPTER 3. DEPARTMENT OF REVENUE LUXURY TAX SECTION

(Authority: A.R.S. § 42-1202 et seq.)

Article 1 consisting of Sections R15-3-101 through R15-3-104, Article 2 consisting of Sections R15-3-201 through R15-3-204, Article 3 consisting of Sections R15-3-301 through R15-3-322, Article 4 consisting of Sections R15-3-401 through R15-3-410, Article 5 consisting of Sections R15-3-501 through R15-3-512 adopted effective March 18, 1981.

Former Article 1 consisting of Sections R15-3-01 through R15-3-13 and Article 2 consisting of Sections R15-3-21 through R15-3-28 repealed effective March 18, 1981.

ARTICLE 1. REPEALED

Article 1, consisting of Sections R15-3-101 through R15-3-104, repealed effective May 14, 1993 (Supp. 93-2).

Section
R15-3-101. Repealed
R15-3-102. Repealed
R15-3-103. Repealed
R15-3-104. Repealed

ARTICLE 2. GENERAL

Section
R15-3-201. Definitions
R15-3-202. Reserved
R15-3-203. Repealed
R15-3-204. Repealed

ARTICLE 3. TOBACCO

Section
R15-3-301. Licensing
R15-3-302. Repealed
R15-3-303. Repealed
R15-3-304. Change of Business Name
R15-3-305. Change of Business Location or Mailing Address
R15-3-306. Repealed
R15-3-307. Cancellation of License
R15-3-308. Revocation of License
R15-3-309. Repealed
R15-3-310. Vending Machine Identification and Inspection
R15-3-311. Cigarette Distributor's Monthly Report
R15-3-312. Purchase of Stamps
R15-3-313. Common bond
R15-3-314. Sales in Interstate or Foreign Commerce
R15-3-315. Credit Purchases of Revenue Stamps
R15-3-316. Sale of Unstamped Cigarettes
R15-3-317. Reserved
R15-3-318. Renumbered
R15-3-319. Renumbered
R15-3-320. Repealed
R15-3-321. Renumbered
R15-3-322. Renumbered

ARTICLE 4. LIQUOR

Section
R15-3-401. Wholesaler's return of vinous and malt liquor purchased
R15-3-402. Wholesaler's return of spirituous liquor sold
R15-3-403. Distiller's and manufacturer's report
R15-3-404. Wholesaler's claims for credit or refunds on unsaleable liquor
R15-3-405. Powdered distilled spirits
R15-3-406. Metric conversion
R15-3-407. Primary source -- failure to report by primary source
R15-3-408. Primary source -- failure to report by Arizona wholesalers
R15-3-409. Common bond
R15-3-410. Failure to make a return, failure to pay tax

ARTICLE 5. ADMINISTRATION

Section
R15-3-501. Return and payment of tax -- general
R15-3-502. Repealed
R15-3-503. Repealed
R15-3-504. Repealed
R15-3-505. Repealed
R15-3-506. Repealed
R15-3-507. Repealed
R15-3-508. Repealed
R15-3-509. Repealed
R15-3-510. Procedure for appeal -- payment of tax after decision of Department becomes final
R15-3-511. Repealed
R15-3-512. Repealed

ARTICLE 1. REPEALED

R15-3-101. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective May 14, 1993 (Supp. 93-2).

R15-3-102. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective May 14, 1993 (Supp. 93-2).

R15-3-103. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective May 14, 1993 (Supp. 93-2).

R15-3-104. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective May 14, 1993 (Supp. 93-2).

ARTICLE 2. GENERAL

R15-3-201. Definitions

The following definitions apply to the rules in this Chapter, unless the context requires otherwise:

1. "Indian" means any individual registered on the tribal rolls of the Indian tribe for whose benefit the reservation was created.
2. "Indian Reservation" means all lands within the limits of areas set aside by the United States for the exclusive use and occupancy of Indian tribes by treaty, law, or executive order and which are currently recognized as Indian Reservations by the United States Department of the Interior.
3. "Indian Tribe" means any organized nation, tribe, band or community recognized as an "Indian tribe" by the United States Department of the Interior.
4. "Other tobacco products" means all types of tobacco products fit for human consumption other than cigarettes.
5. "Place of business", "business location", and "location" mean the place where luxuries are sold, stored or kept for the purpose of sale or distribution or, if sold from a vending machine or mobile unit, the location where records of sale are available for examination.
6. "Returns" means Cigarette Distributors Monthly Report; Distributor's Monthly Return of Cigars or Tobacco Products Received; Wholesaler's Return of Vinous and Malt Liquor Purchased; or Wholesaler's Return of Spirituous Liquor Sold.
7. "Sale" means the act of soliciting, receiving an order for, keeping or offering for sale, delivering for value, peddling, keeping with intent to sell, any of the luxuries taxable under this Chapter.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Amended effective May 14, 1993 (Supp. 93-2).

R15-3-202. Reserved

R15-3-203. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective July 23, 1985 (Supp. 85-4).

R15-3-204. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective July 23, 1985 (Supp. 85-4).

ARTICLE 3. TOBACCO

R15-3-301. Licensing

A. The Department issues a tobacco distributor's license to a specific person. The licensee shall not transfer the tobacco distributor's license to a new owner when selling the business. A person shall obtain a tobacco distributor's license before engaging in business as a tobacco distributor.

B. Court appointed trustees, receivers, and others in the case of liquidation, insolvency, or bankruptcy where the business continues to be operated, that sell tobacco products subject to tax shall obtain a tobacco distributor's license in their own name.

C. A licensee that changes its legal entity shall apply for a new tobacco distributor's license. A licensee that changes its form of business shall apply for a new tobacco distributor's license. For example: A licensee that operates as a sole proprietorship incorporates the business. A corporation is a different form of business. The licensee shall apply for a new tobacco distributor's license.

D. A licensee shall obtain a tobacco license for each business location.

E. A licensee shall display the tobacco distributor's license in a conspicuous place at each business location.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-301 repealed, new R15-3-301 renumbered from R15-3-302 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-302. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-302 renumbered to R15-3-301, new Section R15-3-302 renumbered from R15-3-304 and amended effective June 20, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-303. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-303 repealed, new Section R15-3-303 renumbered from R15-3-305 and amended effective June 20, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-304. Change of Business Name

A licensee that changes the name under which the business operates shall notify the Department in writing within 30 days of the name change and request a reissuance of its tobacco distributor's license for each business location.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-304 renumbered to R15-3-302, new Section R15-3-304 renumbered from R15-3-306 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-305. Change of Business Location or Mailing Address

A. A licensee shall notify the Department in writing within 30 days of a change in the physical location of the business and request a reissuance of its tobacco distributor's license for each business location.

B. A licensee shall notify the Department in writing within 30 days of a change in mailing address. The licensee shall specify whether the change is for the mailing address only.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-305 renumbered to R15-3-303, new Section R15-3-305 renumbered from R15-3-307 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-306. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-306 renumbered to R15-3-304, new Section R15-3-306 renumbered from R15-3-308 and amended effective June 20, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-307. Cancellation of License

If a business is sold or terminated, the licensee shall notify the Department in writing within 30 days of the sale or termination of the business, giving the date the business was sold or terminated. The Department shall cancel the license as of the date of sale or termination of the business.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-307 renumbered to R15-3-305, new Section R15-3-307 renumbered from R15-3-309 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-308. Revocation of License

A. The Department may revoke a license for violation of the provisions of A.R.S. Title 42, Chapter 3 or this Article.

B. The Department shall give written notice of the revocation to a licensee 30 days prior to the effective date of the revocation by delivering the notice to the licensee by certified mail, at the licensee's place of business.

C. A licensee has 30 days after the notice is mailed to appeal the revocation, in writing, to the Department. If the licensee does not file an appeal within the 30-day period, the Department's determination becomes final.

D. If the licensee files a timely appeal, the Department shall request a hearing by the Office of Administrative Hearings.

E. If the licensee appeals the revocation, the Department shall suspend action until the final order of the Department has been issued under A.A.C. R15-10-131.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-308 renumbered to Section R15-3-306, new Section R15-3-308 renumbered from R15-3-310 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-309. Repealed

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-309 renumbered to Section R15-3-307, new Section R15-3-309 renumbered from R15-3-311 and amended effective June 20, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-310. Vending Machine Identification and Inspection

A. A licensee shall ensure that the Department's agents are able to inspect all cigarettes that are distributed through or by vending machines. The licensee shall visibly display cigarettes in all vending machines so the Department's agents can inspect the cigarettes in the machines to verify that the required cigarette tax stamps are properly affixed, unless subsection (B) of this rule applies.

B. If the cigarettes cannot be visually inspected in a vending machine, the person in possession of the machine shall have access to the cigarettes in the machine and shall permit agents of the Department to inspect the cigarettes visually.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-310 renumbered to R15-3-308, new Section R15-3-310 renumbered from R15-3-313 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-311. Cigarette Distributor's Monthly Report

Every distributor selling cigarettes subject to the luxury tax under A.R.S. Title 42, Chapter 3 shall file with the Department a "Cigarette Distributor's Monthly Report" on the 20th of each month showing:

1. The quantity of cigarettes and cigarette tax stamps purchased and sold or otherwise disposed of during the calendar month immediately preceding the month in which the report is filed;
2. The quantity of cigarettes and stamps on hand at the beginning and at the end of the month.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-311 renumbered to Section R15-3-309, new Section R15-3-311 renumbered from R15-3-314 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-312. Purchase of Stamps

A. A licensed tobacco distributor shall obtain cigarette tax stamps from the Department.

B. A distributor shall not sell, lend, give, or otherwise transfer tax stamps to another person.

Historical Note

Former Section R15-3-316 renumbered to R15-3-312 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-313. Common bond

Any group or association of wholesalers or retailers wishing to purchase revenue stamps on credit may furnish a common bond in such form as prescribed by the Department in the aggregate of 2 1/2 times the participating wholesalers or retailers monthly stamp purchases. Each participating wholesaler or retailer shall be shown separately as to name, location and amount.

Historical Note

Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-313 renumbered to R15-3-310, new Section R15-3-313 renumbered from R15-3-318 effective June 20, 1990 (Supp. 90-2).

R15-3-314. Sales in Interstate or Foreign Commerce

Cigarettes or other tobacco products sold by licensed distributors to purchasers located outside the state are exempt from the tax imposed by A.R.S. Title 42, Chapter 3, if the following conditions are met:

1. The cigarettes or other tobacco products are shipped or delivered by the distributor to a location outside the state for use outside the state; and
2. The distributor files a "Cigarette Distributor's Monthly Report" or a "Monthly Return of Cigars or Other Tobacco Products Purchased", as applicable, indicating the amount of out-of-state sales in the appropriate section and the party to whom the sales were made; and:
   a. Submits 1 copy of the return or report to the Arizona Department of Revenue;
   b. Submits 1 copy of the return or report to the taxing authority of the state of destination of the cigarettes or other tobacco products; and

c. Retains 1 copy of the return or report for 2 years following the close of the calendar year in which the sale is made.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-314 renumbered to R15-3-311, new Section R15-3-314 renumbered from R15-3-319 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-315. Credit Purchases of Revenue Stamps
A distributor may increase its credit limit for cigarette tax stamp purchases by increasing the amount of the bond on file with the Department.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Amended effective November 5, 1986 (Supp. 86-6). Former Section R15-3-315 repealed, new Section R15-3-315 renumbered from R15-3-321 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-316. Sale of Unstamped Cigarettes
A distributor shall file a Form 800-20 or Form 800-25, Distributor's Monthly Report, with the Department showing that the distributor has purchased a sufficient number of stamps to be affixed to all cigarettes it distributes in this state during the period. If the distributor does not provide this information, the Department shall presume that the distributor sold unstamped cigarettes. In that case, the Department shall determine the amount of unstamped cigarettes sold by the distributor and shall issue a proposed deficiency assessment for any luxury tax found due. The proposed deficiency assessment becomes final unless the distributor protests the assessment within 45 days under A.R.S. § 42-1008 and A.A.C. Title 15, Chapter 10, Article 1.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-316 renumbered to R15-3-312, new Section R15-3-316 renumbered from R15-3-322 and amended effective June 20, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2168, effective June 15, 1999 (Supp. 99-2).

R15-3-317. Reserved

R15-3-318. Renumbered

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-318 renumbered to R15-3-313 effective June 20, 1990 (Supp. 90-2).

R15-3-319. Renumbered

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-319 renumbered to R15-3-314 effective June 20, 1990 (Supp. 90-2).

R15-3-320. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Repealed effective June 20, 1990 (Supp. 90-2).

R15-3-321. Renumbered

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-321 renumbered to R15-3-315 effective June 20, 1990 (Supp. 90-2).

R15-3-322. Renumbered

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Former Section R15-3-322 renumbered to Section R15-3-316 effective June 20, 1990 (Supp. 90-2).

ARTICLE 4. LIQUOR

R15-3-401. Wholesaler's return of vinous and malt liquor purchased
A "Wholesaler's Return of Vinous and Malt Liquor Purchased" must be filed, together, with a remittance of tax due, pursuant to A.R.S. § 42-1205. The date of filing by mail is determined pursuant to A.R.S. § 1-218. Supporting schedules must accompany this return to provide the following detailed information:

1. Schedule of all purchases made during month on which Luxury Tax was not paid prior to receipt;
2. Schedule of all purchases on which Arizona Luxury Tax was paid prior to receipt including returns from retailers on which luxury tax was paid;
3. Schedule of out-of-state sales and returns to vendors outside the state;
4. Schedule of tax-free sales in Arizona.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Amended effective July 23, 1985 (Supp. 85-4).

R15-3-402. Wholesaler's return of spirituous liquor sold
A "Wholesaler's Return of Spirituous Liquor Sold" must be filed, together with remittance for tax due, pursuant to A.R.S. § 42-1205. The date of filing by mail is determined pursuant to A.R.S. § 1-218. Supporting schedules must accompany this return to provide the following detailed information:

1. Schedule of spirituous liquors imported into the state;
2. Schedule of spirituous liquors purchased from Arizona wholesale licensees;
3. Schedule of sales of spirituous liquor to Arizona wholesale licensees;
4. Claim for luxury tax exemption on spirituous liquor exported from the state.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2). Amended effective July 23, 1985 (Supp. 85-4).

R15-3-403. Distiller's and manufacturer's report
Every distiller, brewer, winery and/or supplier or manufacturer of alcoholic beverage who sells any of such beverages to wholesalers within the state, shall at the time of making such sale, file with the Department a copy of the invoice of such sale, showing in detail the kind of liquor or beverage sold, the quantities of each, the size of the container and the weight of the contents, the alcoholic content, and the name of the person, firm or corporation to whom sold.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).

R15-3-404. Wholesaler's claims for credit or refunds on unsaleable liquor
All claims by wholesalers for credits or refunds against the Department on unsaleable liquor damaged through breakage, spoilage or turning stale by climatic conditions within the state shall

be submitted in writing on the prescribed forms or other acceptable forms describing all particulars together with computations. The basis for claims or credits, exemptions or refunds for luxuries is as follows:

1. Exports and shipments from the state of Arizona shall be verified by copy of invoice, bill of lading or acknowledgment from a department of the state to which shipped responsible for acknowledging receipt of such exports.
2. Unsaleable malt liquors and vinous liquors spoiled at the time received and returned by wholesaler or destroyed when instructed by brewery, firm or winery; a credit memorandum from brewery, firm or winery and instructions to destroy, and an inspection by an agent of the Department prior to returning or destruction.
3. Spirituous liquors damaged by fire or smoke or unsaleable due to short fills, improper or damaged labels.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).

R15-3-405. Powdered distilled spirits

A. The Luxury Tax Law and Regulations apply with respect to any alcoholic mixture or preparation in the same manner and to the same extent as with respect to other distilled spirits. The tax will be paid at the same rate per gallon, or metric equivalent, and at a proportionate rate for any quantity, as for distilled spirits of the same proof strength in liquid form.

B. The weight of any alcoholic mixture or preparation shall be converted to volume as follows:
1. One pound equals .16 wine gallon.
2. One ounce equals .01 wine gallon.
3. One gram equals .000353 wine gallon.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).

R15-3-406. Metric conversion

For purposes of the computation of taxes imposed upon spirituous or vinous liquors under A.R.S. § 42-1204, where such liquors are sealed in containers of metric dimensions, the following conversion table shall be used:

1. For Spirituous Liquors:

	Bottle size	Bottles per case	U.S. gallons per case
a.	1.75 Liter	6	2.7738
b.	1.00 Liter	12	3.1701
c.	750 Milliliters	12	2.3775
d.	500 Milliliters	24	3.1701
e.	200 Milliliters	48	2.5361
f.	50 Milliliters	120	1.5850

2. For Vinous Liquors:

	Bottle size	Bottles per case	U.S. gallons per case
a.	3.00 Liter	4	3.1701
b.	1.50 Liter	6	2.3775
c.	1.00 Liter	12	3.1701
d.	750 Milliliters	12	2.3775
e.	375 Milliliters	24	2.3775
f.	187 Milliliters	48	2.3712
g.	10 0 Milliliters	60	1.5850

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).

R15-3-407. Primary source -- failure to report by primary source

Upon determination by the Department that a primary source, as defined in A.R.S. § 4-243.01, has failed to report any sale of alcoholic beverages to wholesalers within the state, the Department will notify all Arizona wholesalers not to accept any shipment of alcoholic beverages from such primary source of supply for a period of 1 year.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).

R15-3-408. Primary source -- failure to report by Arizona wholesalers

Upon determination by the Department that an Arizona wholesaler has failed to transmit to the Department copies of all invoices for alcoholic beverages purchased from any primary source the Department will report such failure to the Department of Liquor License and Control.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).

R15-3-409. Common bond

Any group or association of licensed wholesalers may furnish a common bond in such form as prescribed by the Department in the aggregate of twice the participating wholesalers monthly excise tax. Each participating wholesaler shall be shown separately as to name, location and amount. The amount of the bond shall not be less than 2,000 dollars for any single wholesaler.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).

R15-3-410. Failure to make a return, failure to pay tax

The Department shall report any failure to file returns or pay the tax due, to the Department of Liquor License and Control and may request the Department of Liquor License and Control to issue a citation against the licensee.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).

ARTICLE 5. ADMINISTRATION

R15-3-501. Return and payment of tax -- general

A. All reports and returns required to be filed by the Act or these rules shall be deemed timely filed if postmarked by the U.S. postal service on or before the due date.

B. If the monthly report form is not available, the taxpayer shall submit the taxpayer's report or return on a plain sheet of paper.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Amended effective June 20, 1990 (Supp. 90-2).

R15-3-502. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-503. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-504. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-505. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-506. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-507. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-508. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-509. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-510. Procedure for appeal -- payment of tax after decision of Department becomes final

When 30 days have expired after notice of a decision from the Director has been received by the taxpayer and the taxpayer has not taken further action to appeal to the State Board of Tax Appeals, the tax shall be paid within 10 days after the 30-day period has expired.

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Amended effective June 20, 1990 (Supp. 90-2).

R15-3-511. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective February 22, 1989 (Supp. 89-1).

R15-3-512. Repealed

Historical Note
Adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective February 22, 1989 (Supp. 89-1).

TITLE 15. REVENUE

CHAPTER 4. DEPARTMENT OF REVENUE
PROPERTY AND SPECIAL TAX SECTION

(Authority: A.R.S. § 42-121 et seq.)

ARTICLE 1. PROPERTY VALUATION

ARTICLE 2. VALUATION OF MINES

Article 2, consisting of Sections R15-4-201 through R15-4-206, adopted effective December 10, 1985.

ARTICLE 3. VALUATION OF AIRLINE PROPERTY

Article 3, consisting of Sections R15-4-301 through R15-4-303, adopted effective May 5, 1986.

ARTICLE 4. CLASS SEVEN LIMITED VALUE AND ASSESSMENT RATIO

Article 4, consisting of Sections R15-4-401 and R15-4-402, adopted effective November 14, 1986.

ARTICLE 5. VALUATION OF PIPELINE AND TELECOMMUNICATION COMPANIES

Article 5, consisting of Sections R15-4-501 through R15-4-508, adopted effective August 6, 1986.

ARTICLE 1. PROPERTY VALUATION

R15-4-101. Repealed

Historical Note
Former Rule 1. Former Section R15-4-01 renumbered as Section R15-4-101 without change effective December 10, 1985 (Supp. 85-6). Repealed effective April 13, 1987 (Supp. 87-2).

R15-4-102. Repealed

Historical Note
Former Rule 2. Former Section R15-4-02 renumbered as Section R15-4-102 without change effective December 10, 1985 (Supp. 85-6). Repealed effective April 13, 1987 (Supp. 87-2).

R15-4-103. Prorating value for classification purposes

A. If the assessor determines that a parcel of property should have more than one assessment ratio due to multiple uses pursuant to A.R.S. § 42-227, the ratios shall be calculated in accordance with this rule and applied to the full cash value of the entire parcel.

B. For secondary tax purposes separate assessment ratios shall be calculated for land and improvements.
1. The assessment ratio for land shall be calculated by taking the appraised value of the land in each class divided by the total value of the land. The resultant quotient for each class shall be then multiplied by the assessment ratio for the class. The sum of these products is the ratio for the land.
2. The assessment ratio for improvements shall be calculated by taking the appraised value of the improvements in each class divided by the total appraised value of the improvements. The resultant quotient for each class shall then be multiplied by the assessment ratio for the class. The sum of these products is the assessment ratio for improvements.

C. For primary tax purposes a single assessment ratio shall be calculated to be applied to the limited value.
1. The assessment ratio for limited value shall be calculated by dividing the full cash value of the land by total full cash value of land and improvements. The resultant quotient shall then be multiplied by the assessment ratio for land as calculated in (B)(1) above.
2. The full cash value of improvements shall be divided by the total full cash value of land and improvements. The resultant quotient shall then be multiplied by the assessment ratio for improvements as calculated in (B)(2) above.
3. The sum of the factors calculated in (C)(1) and (C)(2) is the assessment ratio for limited value.

Historical Note
Former Rule 3. Former Section R15-4-03 renumbered as Section R15-4-103 without change effective December 10, 1985 (Supp. 85-6). Former Section R15-4-103 repealed, new Section R15-4-103 adopted effective September 16, 1987 (Supp. 87-3).

R15-4-104. Repealed

Historical Note
Former Rule 4. Former Section R15-4-04 renumbered as Section R15-4-104 without change effective December 10, 1985 (Supp. 85-6). Repealed effective April 13, 1987 (Supp. 87-2).

R15-4-105. Repealed

Historical Note
Former Rule 5. Former Section R15-4-05 renumbered as Section R15-4-105 without change effective December 10, 1985 (Supp. 85-6). Repealed effective April 13. 1987 (Supp. 87-2).

R15-4-106. Repealed

Historical Note
Former Rule 6. Former Section R15-4-06 renumbered as Section R15-4-106 without change effective December 10, 1985 (Supp. 85-6). Repealed effective April 13, 1987 (Supp. 87-2).

R15-4-107. Separate assessment of minerals and mineral rights
In any case where minerals or mineral rights in land are owned by some person or persons other than the person or persons owning the surface rights, such minerals or mineral rights may be assessed separately from the surface rights. Whenever the value of the minerals or mineral interest is substantial, then such separately owned minerals or mineral interest shall be separately assessed.

Historical Note
Former Rule 7. Former Section R15-4-07 renumbered as Section R15-4-107 without change effective December 10, 1985 (Supp. 85-6).

R15-4-108. Valuation of separately assessed minerals or mineral rights
Unless there are known mineral reserves, or unless there is a current mineral lease on the property, or unless there is a reasonable basis for believing that minerals having a substantial value are located on the property, such separately owned minerals or mineral interest in land shall be valued at such amount per acre as is annually determined by the Department of Revenue.

Historical Note
Former Rule 8. Former Section R15-4-08 renumbered as Section R15-4-108 without change effective December 10, 1985 (Supp. 85-6).

R15-4-109. Taxpayer reports
On or before April 1 of each year, mines, railroads, pipelines, gas, water, electric, and telecommunications companies, shall file the reports required by the Director of the Department of Revenue. The reports shall be in such form as is prescribed by the Director. Requests for extension of time for filing shall be made with the Director in writing on or before April 1.

Historical Note
Former Rule 9. Former Section R15-4-09 renumbered as Section R15-4-109 without change effective December 10, 1985 (Supp. 85-6). Amended effective June 25, 1987 (Supp. 87-2).

R15-4-110. Repealed

Historical Note
Former Rule 10. Former Section R15-4-10 renumbered as Section R15-4-110 without change effective December 10, 1985 (Supp. 85-6). Amended effective June 25, 1987 (Supp. 87-2). Repealed effective December 11, 1998 (Supp. 98-4).

R15-4-111. Repealed

Historical Note
Former Rule 11. Former Section R15-4-11 renumbered as Section R15-4-111 without change effective December 10, 1985 (Supp. 85-6). Repealed effective April 13, 1987 (Supp. 87-2).

R15-4-112. Repealed

Historical Note
Adopted effective May 13, 1980 (Supp. 80-3). Former Section R15-4-12 renumbered as Section R15-4-112 without change effective December 10, 1985 (Supp. 85-6). Repealed effective April 13, 1987 (Supp. 87-2).

R15-4-113. Repealed

Historical Note
Adopted effective May 13, 1980 (Supp. 80-3). Former Section R15-4-13 renumbered as Section R15-4-113 without change effective December 10, 1985 (Supp. 85-6). Repealed effective April 13, 1987 (Supp. 87-2).

R15-4-114. Repealed

Historical Note
Adopted effective May 13, 1980 (Supp. 80-3). Former Section R15-4-14 renumbered as Section R15-4-114 without change effective December 10, 1985 (Supp. 85-6). Repealed effective April 13, 1987 (Supp. 87-2).

R15-4-115. Annual report

A. Every airline company operating within this state shall file a report under oath with the Department on or before the statutory deadline of each year. This report shall set forth the following information according to type of aircraft for the entire preceding calendar year provided, however, that the taxpayer may report for the first week of each calendar quarter of the preceding calendar year if reporting on that basis does not result in a lower valuation apportioned to the state than reporting on an entire calendar year basis:
1. The total Arizona ground time for flight property operated in air commerce,
2. The total system ground time for flight property operated in air commerce,
3. The total Arizona mileage for flight property operated in air commerce, and
4. The total system mileage for flight property operated in air commerce.

B. Aircraft are of different types under Subsection (A) of this rule if any of the following differ:
1. Seating capacity,
2. Type, size, or placement of engines,
3. Manufacturer, or
4. Overall design.

C. Annual reports shall be reported on forms prescribed by the Department. Such forms shall be filed on or before the statutory deadline each year. If any form is not fully completed, such form may not be accepted for filing.

Historical Note
Adopted effective May 13, 1980 (Supp. 80-3). Former

Section R15-4-15 renumbered as Section R15-4-115 without change effective December 10, 1985 (Supp. 85-6).

R15-4-116. Definition

"Disabled". For purposes of the property tax exemption, the term "totally and permanently disabled person" means:

1. A person who is totally and permanently disabled, either physically or mentally, resulting in the person's inability to engage in any substantial gainful activity.
2. The disability must be expected to last for a continuous period of not less than 12 months and must be medically certified by a competent medical authority.

Historical Note

Adopted as an emergency effective June 20, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Former emergency adoption now adopted effective October 30, 1980 (Supp. 80-5). Former Section R15-4-16 renumbered as Section R15-4-116 without change effective December 10, 1985 (Supp. 85-6).

R15-4-117. Repealed

Historical Note

Adopted effective February 17, 1988 (Supp. 88-1). Amended effective July 31, 1989 (Supp. 89-3). Amended effective July 3, 1991 (Supp. 91-3). Repealed effective June 15, 1998 (Supp. 98-2).

R15-4-118. Sales screening and processing

A. The Department's sales ratio studies shall be based upon sales data contained in affidavits of property value which have been screened by the county assessors and the Department.

B. The Department shall maintain a list of validation codes to be used by the county assessors for the screening, editing and processing of affidavits of property value. The county assessors shall assign a validation code from the Department's list to each affidavit of property value before transmittal to the Department. For sales which do not require a change in legal description, the assessors shall transmit such affidavits of property value to the Department within 30 days of recording. For sales which require changes in a parcel's legal description, the assessors shall transmit such affidavits of property value to the Department by January 31 of the year following the calendar year of recording.

C. The Department may modify the validation codes assigned to any affidavit of property value by the county assessor. The Department shall notify the county assessor in writing of any such modifications. The county assessor may request the Department to reconsider the modified validation codes within 15 days after receiving notice of the Department's modification.

D. If the validation code indicates that a sale does not represent the market value of the subject property, that sale shall be excluded from the Department's sales ratio studies.

E. Multiple parcel sales of five or less parcels shall be included in the Department's sales ratio studies, unless the validation code indicates that the sale does not represent market value.

F. If the validation code indicates that a sale represents the market value of the subject property, the Department shall compute the ratio that the full cash value of the subject property bears to the selling price of the subject property for use in its sales ratio study. However, the Department shall eliminate the following from its sales ratio studies:

1. Sales that have extremely high or extremely low ratios;
2. Sales in which there has been new construction; and
3. Sales which do not represent the market value of the subject property for the tax year in question.

Historical Note

Adopted effective February 17, 1988 (Supp. 88-1).

R15-4-119. Repealed

Historical Note

Adopted effective February 17, 1988 (Supp. 88-1). Repealed effective June 15, 1998 (Supp. 98-2).

R15-4-120. Repealed

Historical Note

Adopted effective February 17, 1988 (Supp. 88-1). Repealed effective June 15, 1998 (Supp. 98-2).

R15-4-121. Repealed

Historical Note

Adopted effective February 17, 1988 (Supp. 88-1). Amended effective July 31, 1989 (Supp. 89-3). Repealed effective June 15, 1998 (Supp. 98-2).

R15-4-122. Repealed

Historical Note

Adopted effective February 17, 1988 (Supp. 88-1). Repealed effective June 15, 1998 (Supp. 98-2).

R15-4-123. Repealed

Historical Note

Adopted effective February 17, 1988 (Supp. 88-1). Repealed effective June 15, 1998 (Supp. 98-2).

ARTICLE 2. VALUATION OF MINES

R15-4-201. Mine valuation

A. For the purpose of determining the "full cash value", the Department shall annually utilize standard appraisal methods and techniques, and the three approaches to value. Those approaches, as defined in R15-4-203, R15-4-204, and R15-4-205, are:

1. The Income Approach,
2. The Cost Approach,
3. The Market Approach.

B. The Department shall prepare appraisal reports on mine properties with a full cash value greater than one million dollars. The appraisal reports shall include a description of the subject property, the full cash value determined for the property, and detail of the methods and calculations employed in determining the full cash value of the property. Information extracted from:

1. Recent field visits,
2. Technical reports, and
3. Engineering and financial studies for approved projects, shall be included, if available.

No copies of any pages from such field visit and technical reports and engineering and financial studies shall be included in the appraisal report. Technical literature data shall be included.

C. The Department shall, upon written request, hold informal conferences with the taxpayer after preliminary worksheets are issued and before the final values are established. At the informal conference, the Department shall review with the taxpayer the procedures and calculations employed in the valuation of the property. If the taxpayer requests a revision of the appraisal report, the taxpayer shall provide copies of feasibility studies and/or other information pertaining to the requested revision.

D. At the request of the taxpayer, preliminary appraisal worksheets shall be made available to the taxpayer at least seven calendar days before the informal conference on the prelimi-

nary determination of value. If a date sooner than seven calendar days is mutually agreeable between the taxpayer and the Department, then the seven day requirement is waived. The Department shall release final worksheets and the determination of value by June 15. The Department shall provide the taxpayer with a final appraisal report by July 25 upon request.

E. The Department shall annually prepare an appraisal manual for mines and natural resources. The manual shall include the guidelines necessary for the appraising of the properties subject to these rules. The manual shall contain, but not be limited to appropriate schedules for the discount rate, ore reserve values, residual value factors, salvage value factors, reproduction cost new less depreciation and the effective income tax rate for valuation purposes. The Department shall annually hold a meeting for affected taxpayers concerning the manual prior to February 1 for the purpose of discussing changes the Department proposes to make in the manual for the current tax year. The Department shall make available any information which is not confidential in nature that is utilized in the determination of the schedules and other factors contained in the manual. Reporting forms and instructions shall be supplied to the taxpayers by February 1 of each year. The manual shall be made available to the taxpayer by March 15 of the tax year.

Historical Note
Adopted effective December 10, 1985 (Supp. 85-6).
Amended Subsection (B) effective May 24, 1989 (Supp. 89-2).

R15-4-202. Definitions

A. "Extracted for commercial purposes" means extraction on a commercial scale at an operating production rate, with a significant amount of the mineral becoming subject to the Arizona severance tax on a continuing basis. Public announcements shall be considered an indication of producing status. Extraction of mineral for assay, research or development purposes does not constitute extraction for commercial purposes.

B. "Mine" means a producing mine, nonproducing mine or mine unit and includes all taxable properties located within the state and operated in conjunction with or formerly used in a mine, including but not limited to, the following:

1. All facilities and equipment situated within the state used in, or formerly used in mine operations, including mine plants, mills, concentrators, smelters, refineries, chemical plants, electro-winning plants, and all related facilities which directly or indirectly contribute or contributed to the production of the mine revenues. Manufacturing facilities, such as a rod plant, incorporated railroads, utilities and custom facilities shall not be included in the mine. Custom smelters are those which are not operated as an integral part of the mine facilities and/or located at the mine site.
2. Land which is being used or formerly used for production. The outer boundary shall be one claim beyond the producing claims, or, in the case of a fee interest, 1500 feet beyond the boundary of the fee parcel. The mine unit includes land on which the items described in Paragraph (1) are situated, all ore reserves, ultimate pit or subsidence limits, all waste storage, leach and tailing dump sites, water facilities used for production, rights-of-way used for mine-operated unincorporated railway lines, conveyor lines, water and utility lines. Land shall include patented and unpatented mining claims, fee simple interests, severed mineral rights, leased land and surface rights used in the mine operations.
3. Health care facilities situated in proximity to the mine which are operated primarily for the benefit of the employees.

C. "Ore" means mineralized rock, which can be mined, processed, and made to yield saleable metal or other mineral products at a profit.

D. "Ore reserves" means that estimate of ore which is in existence and can reasonably be estimated to be capable of extraction, processing and sale at a profit.

E. "Reproduction cost" means the cost of construction of an exact duplicate at current prices using the same materials, construction standards, design, layout and quality of workmanship.

F. "Depreciation" means the loss of value from any source and includes:

1. Physical deterioration which is normally caused by wear and tear.
2. Functional obsolescence which is the decrease in the capacity or efficiency to perform the function for which it was intended in terms of current standards.
3. Economic obsolescence which comes from factors outside the property itself.

G. "Capital expenditures" for the purpose of the income approach shall be classified as follows:

1. Original capital investment, such as original land acquisition, exploration, development including pre-mine stripping and initial plant construction.
2. Expansion capital, such as plant construction and additional equipment that results in increased plant capacity or increased production of the mine unit as a whole; expansion capital does not include equipment or construction necessary to maintain production levels.
3. Replacement capital, such as necessary replacements of plant, equipment, or construction required to maintain production levels.
4. Mandated expenditures, such as environmental or safety facilities and equipment.

H. "Temporary shutdown" means a shutdown on a continued maintenance basis with the intention to restart when conditions improve. The mine will be valued on the basis of the residual cost approach.

I. "Permanent shutdown" means a shutdown due to complete depletion of the orebody or the lack of commercial value of the orebody. The mine shall be considered a nonproducing mine and valued on the basis of salvage.

J. "Liquid supplies" means supply inventory items which are readily marketable, such as tools, fuels, cable, pipe, electric motors, lumbers and the like.

K. "Salvage value" means the sum of the salvage value for plant and equipment, construction-in-progress and supplies. Salvage value shall include a value for land.

L. "Residual value" means the sum of the residual value for plant and equipment, ore reserve, supplies and construction-in-progress. The residual value shall include a value for land. The residual value for plant and equipment is determined by applying the Department's residual factors contained in the Department's percent good factor table.

M. "Prolonged shutdown" means reduction in production to 20 percent or less of the recent historic production for more than six months.

Historical Note
Adopted effective December 10, 1985 (Supp. 85-6).
Amended effective May 24, 1989 (Supp. 89-2).

R15-4-203. Income approach procedures for mines

A. The income approach estimate of value for mine property shall be based on a discount of projected future cash flows to a

present value at a discount rate adequate to justify current mine investments. Derivation of the cash flows shall be based on the use of a five-year arithmetic average margin per unit of product multiplied by projected output of metal or mineral over the life of the mine. The life of the mine shall be based on the size of the ore reserve and the projected rate of production. Cash flow shall be based on an all-equity investment on a production basis, not a sales basis, assuming all production is sold in the year produced. Financing and interest charges shall not be considered.

B. Discount rates shall be developed annually by the Department. The discounting technique used by the Department shall be the single rate method. No adjustments shall be made for sales, product inventory, financing or interest charges.

C. To calculate the margin, the five-year period shall be on a cents or dollars per unit of production basis and averaged to find the historic margin. The historic five-year margin shall be calculated on the following basis:

1. Gross income, calculated by summing Subparagraphs (a) and (b) below:
   a. The gross value of production. The historic average selling price per unit of each mineral product should be computed by dividing the sales revenue of each mineral product by the units of that product which were sold.
      This quotient shall be multiplied by the quantity of mine output and the product shall be the historical gross value of production for the year.
   b. Miscellaneous revenue composed of the income or loss from power sales, water sales, miscellaneous sales, acid sales, as well as toll processing, the rentals of real and personal property, and hospital facilities if operated as part of the mine unit.
2. Expenses, calculated by deducting Subparagraphs (a), (b), and (c) below:
   a. All expenses associated with the production, administration, distribution, development and marketing functions of the operation on the basis of generally accepted accounting principles and the cash expenses associated with the miscellaneous revenue specified in Paragraph (1), Subparagraph (b) above, if not already deducted. Income tax charges, depreciation and depletion, and amortization of fixed assets shall not be included as expenses. The expenses for smelting and/or refining will be calculated on a market basis if the material is processed out of state or at a location which is locally assessed and not includable in the producing mine unit from which the material was extracted. Intracompany charges between centrally assessed producing mine units within the state will be calculated at actual cost.
   b. Federal and Arizona income taxes shall be based upon general tax concepts, computed with respect to the mining property. Provisions contained in Federal and Arizona income tax statutes and regulations shall not be determinative. Due to their hypothetical nature all tax calculations shall be governed exclusively by the rules contained below.
      i. Income taxes shall be calculated as if the producing mine were a separate taxable entity. The effective tax rate for mines shall be developed annually by the Department and included in the manual.
      ii. Income taxes shall be calculated separately for each year of the five-year historic margin period. In this respect, the following shall apply:
         (1) Negative as well as positive tax liabilities shall be determined, and
         (2) No provision is made for the carryback or carryover of losses or credits.
      iii. Taxable income shall be determined by subtracting the expenses specified in rule R15-4-19(C)(2) from the gross income specified in rule R15-4-19(C)(1).
      iv. Federal and Arizona income tax liabilities, both positive and negative liabilities, shall be determined by multiplying the effective tax rate by the final taxable income or loss determined in accordance with all provisions of (b)(iii) above.
   c. All replacement and mandated capital expenditures incurred during the year. Capitalized lease payments for replacement and mandated items will be treated as capital expenditures. For the purposes of this Paragraph "capital expenditures" means allowable capital expenditures computed on an amortization or depreciation basis over ten years, or the life of the mine, whichever is less.
3. The historic margin shall be determined based on the five years preceding the current tax year, including loss years. Nonrepresentative years in which a drastic change or a prolonged shutdown occurs shall not be utilized. A drastic change or a prolonged shutdown must be one so significant that the five-year average margin cannot be adjusted adequately to reflect current conditions.

D. Temporary suspension of operations due to strikes and losses resulting from operations during unfavorable market conditions shall be included in the five-year historic margin. If the suspension is not likely to recur it shall not be included.

E. In instances where a particular property has not been taxed as a producing mine for five years preceding the tax year, the historic margin shall be determined based upon the number of years the property has been a producing mine.

F. The historic margin shall be applied to estimated future production to derive future cash flows. The taxpayer shall be required to report estimated future production and the factors used in the estimating procedure. The historic margin used in the cash flow computation shall be adjusted under certain circumstances to reflect changes in economic or operating conditions. Such adjustments shall not be made unless conditions exist that will have a significant impact on the future economic performance of the unit and are not reflected in the historic margin. Any adjustment made to the historic margin shall account for all reasonable operating and capital cost changes, shall be supported by documentation and field visit data, and shall include an income tax adjustment. The taxpayer's estimates of future production shall be adjusted, where appropriate, by the appraiser. Other adjustments shall be made, provided such adjustments are not based on speculation or made for conditions already reflected in the historic margin.

Historical Note
Adopted effective December 10, 1985 (Supp. 85-6).
Amended effective May 24, 1989 (Supp. 89-2).

R15-4-204. Cost approach procedures for mines

A. The cost approach estimate for mine property shall include a value for land, supplies inventory, ore reserves, construction work in progress, improvements and personal property. This value shall be based on the theory of reproduction cost new, less all applicable forms of depreciation for the property.

B. Ore reserve value is based on a representative value factor multiplied by units of recoverable metal or mineral that can be expected to be mined during the life of the mine. The value factors are based on an analysis of sales of comparable mineralized bodies in the United States and Canada. Values for land included within the producing unit are based on land values supplied by the county assessor and approved by the Department. Changes in ore reserve factors shall be made available, upon request, by the Department by March 1 of the tax year.

C. Supplies inventory for the mine shall be valued at cost less any appropriate depreciation. Shrinkage shall be considered if the taxpayer supplies quantitative data related to the amount warranted. Physical depreciation for supplies shall be limited to shelf life deterioration and shall not include wear and tear. Functional and/or economic obsolescence shall be considered where the amount of obsolescence was computed on the overall performance of the mine unit or utilizing the "unit concept". Residual or salvage factors shall be applied to nonliquid supplies when residual or salvage values are determinative. Liquid supplies shall be valued at cost in every case except when the taxpayer can show cause for spoilage. Supplies which are totally obsolete shall be valued at salvage. The inventory amounts shall not include any value attributable to metals inventory or other production inventory held for sale.

D. Construction work in progress shall be discounted at the mine's discount rate if completion is expected to be in excess of one year. Functional and/or economic obsolescence shall be considered where the amount of obsolescence was computed on the overall performance of the mine unit or utilizing the "unit concept". Residual and salvage factors shall be applied if the residual and salvage values are determinative. Physical depreciation shall not be considered.

E. Improvements and personal property as reflected in the financial statements of the taxpayer shall be valued on a reproduction cost new less depreciation basis. The cost index for valuing mine property shall be derived from the Department's manual unless actual market values are ascertainable. The basis for physical depreciation shall be straight line.

F. Depreciation schedules shall be included in the Department's appraisal manual for mines. Residual value factors shall be applied to equipment still in service after the expiration of its depreciable life. Residual value factors shall be based on resale values for equipment where resale values are available. Appropriate obsolescence shall be applied to residual value. Salvage values for all improvements and personal property shall be derived by applying the Department's factor to the original cost of the improvement or personal property unless actual salvage values are ascertainable. A summary of equipment lives, salvage factors, and an itemized listing of equipment categories shall be included in the manual. For purposes of this cost approach procedure there shall be at least eight major classes of equipment and improvements:

1. Mining, small scale;
2. Mining, large scale;
3. Milling and leaching;
4. Smelting;
5. Office;
6. Environmental;
7. Shovels and drag lines; and
8. Buildings and improvements.

G. Depreciation in the form of functional or economic obsolescence shall be applied to improvements and personal property where warranted. These forms of obsolescence may be a result of a lack of necessary environmental facilities, technological changes, long-term production curtailments, production performance versus projected performance, or environmental regulations. The mine's financial performance shall be considered as an indicator of obsolescence. Economic and/or functional obsolescence shall be considered on an individual basis for each property and may be related to the life of the ore reserve. Salvage value shall be the controlling limit of the maximum amount of depreciation that may be applied. Economic obsolescence shall be applied when appropriate.

Historical Note
Adopted effective December 10, 1985 (Supp. 85-6).
Amended effective May 24, 1989 (Supp. 89-2).

R15-4-205. Market approach procedures for mines

A. The market approach to value shall be considered where the transaction is an arms-length sale between a willing buyer and a willing seller of the subject property, an undivided interest in the property, or a comparable property. The Department may require detailed information regarding the terms of the sale.

B. The market approach to value shall be used only where the following conditions exist:

1. An arms-length sale of more than 50% interest in the assets, such as mineral reserves, plant, equipment, and inventories, of a mine located wholly within the state of Arizona, or
2. The sale of more than 50% of the stocks, bonds, notes, convertible debentures, warrants, or other documents that represent a share in a corporation or a debt owed by a corporation. This sale is of limited use if the value of the corporation's out-of-state assets is significant relative to its in-state assets subject to valuation under these rules.
3. Minority interest sales may be considered if the other indicators of value are less reliable and the sale price was derived from an analysis of a value for 100% of the mine unit.

Historical Note
Adopted effective December 10, 1985 (Supp. 85-6).
Amended effective May 24, 1989 (Supp. 89-2).

R15-4-206. Determination of value

A. The income approach shall be the primary method for the determination of full cash value of mines and shall ordinarily be considered the best indicator of value. The cost and market approaches shall also be considered and correlated with the income approach where applicable.

B. The income approach shall be the primary method of valuation except when one or more of the following situations exist:

1. Ore reserves of the mine are wholly or predominantly located on nontaxable lands. The value indicated by the cost approach shall be determinative of the full cash value of the mine.
2. The mine property has recently commenced production, or has recently been added to the mine rolls.
3. The mine property is near the end of its economic life;
4. Operations of the mine have resulted in an overall loss, as determined by the historic margin. If estimates of future cash flow can reasonably be made, the income approach shall be utilized. If estimates of future cash flow cannot reasonably be made, the value of the mine shall approximate the property's residual value with appropriate obsolescence applied.
5. Permanently shutdown mines shall be valued at salvage.
6. A sale of the mine unit, or a sale as described in R15-4-205, has occurred within the preceding 12 months. In this case either the income or market approach may be the primary method of value. When the market approach is selected as the primary method of value, the income and cost approaches shall also be considered.

C. In situations (B)(2) and (B)(3) above, the value indicated by the cost approach shall be considered with the value indicated by the income approach with the relative weight to be applied as follows.
1. If estimates of future cash flow can reasonably be made, the income approach shall be weighted more heavily.
2. If estimates of future cash flow cannot reasonably be made, the cost approach, with appropriate obsolescence, shall be weighted more heavily.

D. Full cash value shall never be less than salvage value.

Historical Note
Adopted effective December 10, 1985 (Supp. 85-6).
Amended effective May 24, 1989 (Supp. 89-2).

ARTICLE 3. VALUATION OF AIRLINE PROPERTY

R15-4-301. Repealed

Historical Note
Adopted effective May 5, 1986 (Supp. 86-3). Repealed effective December 11, 1998 (Supp. 98-4).

R15-4-302. Definitions
For the purposes of the following rules, unless the context requires otherwise, the following definitions will apply:
1. "Acquisition cost" means the cost to the current owner.
2. "Acquisition date" means the date placed in service by the current owner.
3. "Arizona mileage" means that portion of system mileage which was flown within Arizona, based on a mileage table developed annually by the Department. The mileage table shall be based on maps and charts published by the Arizona Department of Transportation.
4. "Fleet type" means aircraft type and model.
5. "Flight property" as defined in A.R.S. § 42-701 shall include both owned and leased aircraft.
6. "Original cost" means the capitalized acquisition cost of airframes and engines plus modifications, including capitalized interest, as of December 31 of the preceding calendar year.
7. "Permanently removed from operations" means aircraft which have been entirely terminated from regularly scheduled operations by an airline company.
8. "Regularly scheduled" means the operation of aircraft, according to a plan of dates or times for landings and takeoffs, whether published or not, which meets the following criteria: completion of at least 120 landings or takeoffs within Arizona during the preceding calendar year.
9. "System mileage" means the total statute mileage flown within and outside Arizona during the preceding calendar year. It is the sum of airport-to-airport distances of all flights scheduled, including those flights operated as extra sections to accommodate traffic overflow.

Historical Note
Adopted effective May 5, 1986 (Supp. 86-3). Amended effective January 5, 1988 (Supp. 88-1).

R15-4-303. Repealed

Historical Note
Adopted effective May 5, 1986 (Supp. 86-3). Repealed effective December 11, 1998 (Supp. 98-4).

ARTICLE 4. CLASS SEVEN LIMITED VALUE AND ASSESSMENT RATIO

R15-4-401. Calculation of Class Seven assessment ratios

A. The Department of Revenue shall calculate the assessment ratios for primary and secondary tax purposes for all Class Seven property in accordance with this Regulation. The Department shall transmit these assessment ratios to the counties on or before the third Monday in June of every tax year.

B. For the purpose of determining the Class Seven assessment ratio for secondary property taxes as defined in A.R.S. § 42-227, the Director shall calculate the total assessed valuation and total full cash value of all property in Classes One, Two and Three as follows: The assessed value and full cash value of all property valued by the Department in Classes One, Two, and Three shall be based upon the values determined by the Department on or before the first Monday in June. The assessed value and full cash value of all real property valued by the counties in Class Three shall be based upon the Notices of Value prepared by the county assessors pursuant to A.R.S. § 42-221. The assessed value and full cash value of all secured and unsecured personal property valued by the counties in Class Three shall be estimated based upon the full cash value of such property for the previous tax year. The full cash value of all property valued by the counties in Class Three shall be adjusted to market value, if necessary, based upon
1. the weighed mean sales ratio reflected in the Department's preliminary sales ratio reports for the tax year, and
2. the adjustment determined by the Director for cash equivalency, personal property, and sampling considerations. The sales ratio study shall be conducted in accordance with the statistical principles applicable to such studies.

C. For the purpose of calculating the Class Seven assessment ratio for primary property taxes as defined in A.R.S. § 42-227, the Director shall calculate the total assessed valuation and total limited valuation of all property in Classes One, Two and Three by using the same property values determined under Subsection (B) of this rule, except as follows: The assessed value and limited property value of Class Three property valued by the Department shall be based upon the limited property value of such property as determined by the Department on or before the first Monday in June. The assessed value and limited property value of all real property valued by the counties in Class Three shall be based upon the Notices of Value prepared by the county assessors pursuant to A.R.S. § 42-221. The limited property value of all property valued by the counties in Class Three shall be adjusted by the same percentage as the adjustment made to the full cash value of such property under Subsection(B) of this rule.

Historical Note
Adopted effective November 14, 1986 (Supp. 86-6).

R15-4-402. Repealed

Historical Note
Adopted effective November 14, 1986 (Supp. 86-6).
Repealed effective December 11, 1998 (Supp. 98-4).

ARTICLE 5. VALUATION OF PIPELINE AND TELECOMMUNICATION COMPANIES

R15-4-501. Pipeline and telecommunication valuation

A. For the purpose of annually determining the full cash value of pipeline and telecommunication properties under A.R.S. §§ 42-144 and 42-793, the Department shall use the appraisal methods and techniques provided in Title 15, Chapter 4, Article 5 of its rules. The three approaches to value, as defined in R15-4-503, R15-4-504, and R15-4-505, are:

1. The Income Approach,
2. The Market Approach,
3. The Cost Approach.

B. The Department shall annually prepare an appraisal manual for pipeline and telecommunication properties. The manual shall include the guidelines necessary for appraising the properties subject to these rules. The Department shall hold an annual meeting with affected taxpayers prior to February 1 for the purpose of discussing proposed changes to the manual for the current tax year. Upon request, the Department shall make available information used to develop the guidelines in the manual, except information which is confidential in nature. The manual shall be available to the taxpayers by March 15 of the tax year.

C. The Department shall annually prepare capitalization rate guidelines, which shall describe the methods and techniques used by the Department to develop industry capitalization rates for use in converting income to value. The industry capitalization rates shall be based on the market value of debt and equity securities and the income attributable to those securities.

D. The Department shall prepare annual appraisals of the operating properties of pipeline and telecommunication companies. The appraisals shall include:

1. Calculations used in the methods and techniques employed,
2. A reconciliation of the estimates of value from the three approaches, and
3. A final unit value.

The Arizona allocation factor shall be applied to the final unit value in order to determine the full cash value of the property in Arizona.

E. Upon written request of the taxpayer, the Department shall hold an informal conference with the taxpayer after preliminary worksheets are issued and before the final value is established. At the informal conference, the Department shall review with the taxpayer the procedures and calculations employed in the Department's valuation of the property. If the taxpayer requests a change in the preliminary value, the taxpayer shall provide copies of studies and any other written information supporting the requested change.

F. At the request of the taxpayer, preliminary appraisal worksheets shall be made available to the taxpayer at least seven calendar days before the informal conference. The seven day requirement may be waived by mutual agreement of the Department and the taxpayer. The Department shall release final worksheets and the determination of value by the first Monday in June.

Historical Note

Adopted effective August 6, 1986 (Supp. 86-4).
Amended subsections (A), (B) and (D) effective February 22, 1989 (Supp. 89-1).

R15-4-502. Definitions

In this Article unless context otherwise requires:

1. "Allocation" means the process of assigning a portion of a unit value.
2. "Arizona allocation factor" means the factor used by the Department to assign a portion of a unit value to the state of Arizona.
3. "Common stock" means a share of ownership (equity) in a corporation which usually, but not always, possesses voting power.
4. "Construction work in progress" means property contained in the construction work in progress account reflected on the company's balance sheet as of the assessment date.
5. "Current asset" means an asset that will normally be converted into cash in the normal operation of business within one year.
6. "Current liabilities" means liabilities that will normally be paid within one year.
7. "Deferred income tax" means the amount of income tax for which a taxpayer is not currently liable as a result of the use of accelerated depreciation.
8. "Department" means the Arizona Department of Revenue.
9. "Depreciation" means the loss in value due to all causes, including physical deterioration, functional obsolescence, and economic obsolescence.
10. "Direct capitalization" means a method used to convert a single year's income expectancy into an estimate of value. This conversion is accomplished by dividing the income by the appropriate capitalization rate.
11. "Direct capitalization rate" means a rate derived from the market which is a ratio or relationship between income and value. It is a conversion rate used to convert a single year's estimate of income into a market value indication.
12. "Discernible trend" means the annual rate of change in the net operating income over the three-year period preceding the assessment date has always been positive or has always been negative.
13. "Earnings before interest and taxes (EBIT)" means operating revenues less the following expenses:
    a. Operating and maintenance,
    b. Depreciation and amortization, and
    c. Taxes other than income taxes.
14. "Economic obsolescence" means the impairment of desirability or useful life arising from factors external to the property, such as economic forces or environmental changes which affect supply-demand relationships in the market. Loss in value due to economic obsolescence is distinguished from loss in value due to physical deterioration or functional obsolescence. Economic obsolescence is also referred to as locational or environmental obsolescence.
15. "Functional obsolescence" means the impairment of functional capacity or efficiency. Functional obsolescence reflects the loss in value due to over capacity, inadequacy, and changes in technology, that affect the property itself or affect its relation with other properties which constitute a larger economic unit.
16. "Going-concern value" means the value of an enterprise considered as an operating business, and therefore based on its earning power and prospects, rather than its value in the event of liquidation. A synonym for going-concern value is value in use.
17. "Long-term debt" means a financial obligation generally extending for one or more years.
18. "Market-to-book" means the ratio of industry market value divided by industry book value. Industry market value is derived from a representative sample of companies in the respective industry selected annually by the Department. Book values are from the same industry sample and reflect the book values of debt, preferred, and common capital.
19. "Materials and supplies" means all materials and supplies owned or leased and used in the operation of the company, the costs of which may be partially or totally carried in an account or accounts of this type of property, as

prescribed by the regulatory agency or by generally accepted accounting principles.

20. "Net book value" means the cost of a property as carried in the accounting records less the accumulated depreciation for that property.
21. "Net operating income" means operating revenues less the following expenses: operating and maintenance, depreciation and amortization, other taxes, and income taxes (current and deferred).
22. "Non-capitalized lease" means an agreement which transfers use of property to the lessee during the term of the lease and is not capitalized on the reporting company's balance sheet. Non-capitalized leased property used in the operation of a pipeline company or telecommunications company shall include only that property for which the lease agreement provides that the lessee is responsible for reporting the property for property tax purposes.
23. "Non-traded stock" means common or preferred stock that is closely held and not publicly traded.
24. "Overall capitalization rate" means a ratio of one year's net operating income to the value of the company. It is an "overall" capitalization rate in that the income and corresponding rate represent amounts necessary, on the average, to service the debt and provide dividend returns to both common and preferred equities.
25. "Pipeline company" means any person, partnership, or corporation engaged in the business of producing, storing, selling, or transporting through a pipeline system, oil, natural gas, processed gas, manufactured gas, petroleum products, coal, or other products, within, through, into, or from the state.
26. "Preferred stock" means stock which takes priority over common stock as regards dividends or in liquidation. The dividend rate on preferred stock is usually fixed at the time of issue.
27. "Traded stock" means common or preferred stock that is bought and sold publicly, either on the New York Stock Exchange, American Stock Exchange, or some other stock exchange, including the over-the-counter market.
28. "Unit value or unit market valuation" is a method of valuation which treats the entire property of a company as an integrated enterprise, without reference to the separate value of the component parts.
29. "Yield-to-maturity" means the total return on a bond during the holding period, expressed as a percent.

Historical Note
Adopted effective August 6, 1986 (Supp. 86-4).
Amended paragraph (22) effective February 22, 1989 (Supp. 89-1).

R15-4-503. Income approach procedures

A. The income approach used to estimate the value of the operating properties of pipeline and telecommunication companies shall be based on direct capitalization of net operating income.

B. If there is a discernible trend in net operating income, the income to be capitalized shall be the net operating income for the year preceding the current tax year, unless the income is negative, extremely low, atypical, or not representative of the earning capacity of the operating unit.

C. If the income is negative, extremely low, atypical, or not representative of the earning capacity of the operating unit, or if there is no discernible trend in net operating income, an income which is representative of the earning capacity of the property shall be determined based upon typical industry standards and performance ratios.

D. The capitalization rate shall be based on the industry capitalization rate determined by the Department.

E. The industry rate of capitalization may be adjusted if it is not representative of the operating unit as of the appraisal date. Adjustments to the industry rate of capitalization shall be based upon such factors as the business risk and financial risk of the company compared to the industry. These factors shall be computed by the use of typical industry standards and performance ratios to determine whether the company conforms to the industry pattern.

F. The capitalization is accomplished by dividing the net operating income by the capitalization rate expressed as a decimal; the result of this calculation is the value estimate of the operating unit. This value estimate does not include any value attributable to construction work in progress or the proprietary value of leased property, which shall be added to the final value estimate after reconciliation, as provided in rule R15-4-508.

Historical Note
Adopted effective August 6, 1986 (Supp. 86-4).
Amended subsection (A) effective February 22, 1989 (Supp. 89-1).

R15-4-504. Market approach procedures

A. The market approach used to estimate the value of the operating properties of pipeline and telecommunication companies shall be the stock-and-debt method.

B. The value of common equity shall be determined by one of the following three methods:

1. If the common stock is traded, then its value shall be calculated by taking the average daily closing price of the stock times the number of shares outstanding. The daily stock prices shall be taken from the period of January 1 through December 31 immediately preceding the assessment date. The number of shares outstanding shall be the number reported by the company as of the date of valuation.
2. If the common stock of the operating company is held by another company whose common stock is publicly traded, the value of the holding company's common stock shall be computed as in Subsection (B), Paragraph (1) of this rule. This value shall then be allocated to the operating company using the unweighted average of the following two ratios:
   a. The ratio calculated by dividing the book value of the common equity of the operating company by the book value of the common equity of the holding company, and
   b. The average ratio, for the previous three years, of the pre-tax net income available to common stock of the operating company divided by the pre-tax net income available to common stock of the holding company.
   c. If the ratio calculated in Subsection(B), Paragraph (2), Subparagraph (b) of this rule is negative or atypical for the operating company, then the following ratio shall be substituted: the average ratio, for the previous three years, of the gross revenues of the operating company divided by the gross revenues of the holding company.
3. If the common equity of the operating company is privately held, the value shall be calculated by capitalizing net income available to common for the year preceding the valuation date, before extraordinary items, by the appropriate rate of capitalization determined by the Department. If the income is negative, extremely low, or

atypical, the income shall be determined in accordance with rule R15-4-503(C).

C. The value of preferred stock of the operating company shall be computed for each issue of stock as follows:
1. If the issue has a par or stated value, the market value of the issue shall be computed by dividing the face rate of the issue by the 52-week average of utility preferred stock yields for the issue's rating, then multiplying by the number of shares outstanding times the par or stated value.
2. If the issue does not have a par or stated value, and the annual dividend rate is expressed in dollars and cents, the value in liquidation for the issue will be substituted for par or stated value. The market value of the issue shall be computed as follows: The dollar dividend times the number of shares outstanding, divided by the value of the issue in liquidation, will produce a face rate for the issue. Then divide the face rate by the 52-week average of the utility preferred stock yield ratio for the issue's rating, and multiply by the value in liquidation.

D. The market value of long-term debt is calculated for each debt issue of the operating company by using the current yield, the coupon rate, and the maturity of the debt issue. This valuation technique is referred to as the yield-to-maturity method. The current yield on debt for a company may be obtained from reliable financial sources. The values for each debt issue are summed to arrive at the market value of the long-term debt.

E. The sum of Subsections(B) and (C) and (D) is the gross stock-and-debt value of the operating company.

F. The gross stock-and-debt value shall be allocated between the operating property and the nonoperating properties by use of the unweighted average of the following two ratios:
1. The sum of those accounts in the annual report representing operating property (net plant in service, plus construction work in progress, plus current assets), divided by total assets, and
2. Earnings before interest and income taxes (EBIT) of the operating property divided by the company's EBIT.

G. The market value estimate of the company's operating property is computed by subtracting the value of construction work in progress from the value obtained in Subsection (F). Construction work in progress shall be added to the final estimate of value after reconciliation, as provided in rule R15-4-508.

H. In the determination of value by the market approach, the Department shall consider sales transactions of companies in the same industry when comparable sales are available.

Historical Note
Adopted effective August 6, 1986 (Supp. 86-4).
Amended subsection (A) effective February 22, 1989 (Supp. 89-1).

R15-4-505. Cost approach procedures

A. The cost approach used to estimate the value of the operating properties of pipeline and telecommunication companies shall be based on the net book value of the plant in service accounts plus materials and supplies. For gas transmission pipeline companies, gas stored underground (noncurrent only) shall be included in the cost approach value. Construction work in progress shall be included in the final value estimate for all companies in accordance with R15-4-508.

B. The sum of the preceding amounts shall be multiplied by the market-to-book ratio determined by the Department for the respective industry. This calculation will produce the preliminary value estimate of the company's operating properties by the cost approach.

C. The Department shall consider typical, representative operating and performance ratios for the subject property in order to determine if additional obsolescence is appropriate in the value estimated by the cost approach.

Historical Note
Adopted effective August 6, 1986 (Supp. 86-4).
Amended subsection (A) effective February 22, 1989 (Supp. 89-1).

R15-4-506. Repealed

Historical Note
Adopted effective August 6, 1986 (Supp. 86-4).
Amended subsection (A) effective February 22, 1989 (Supp. 89-1). Repealed effective December 11, 1998 (Supp. 98-4).

R15-4-507. Reconciliation of the value estimates

A. In making a final determination of value, the Department shall consider each of the approaches and methodologies described in these rules, the reconciliation of which will result in the determination of the full cash value of the company's operating property.

B. The Department shall reexamine the specific data, procedures, and techniques used to derive preliminary estimates. Each approach shall be reviewed separately by comparing it to the other approaches to value in terms of adequacy, accuracy, completeness of reasoning, and overall reliability. From this correlation and integration of related facts, the Department shall determine the full cash value as of the assessment date.

C. The Department's final determination of value shall always be within the range indicated by the three approaches to value described in these rules, except as provided in R15-4-506.

D. The Department shall give less weight to the income approach to value when the income to be capitalized is determined in accordance with rule R15-4-503(C).

E. The Department may consider comparable sales in its determination of full cash value. If the subject property has sold within three years prior to the date of valuation, then more weight will be given to its sales price as an indication of value.

F. The Department shall not rely upon fixed numerical weights for each approach in arriving annually at its final value determination. Each year the Department may exercise its discretion to vary the relative weights of the value estimates derived from the three approaches.

Historical Note
Adopted effective August 6, 1986 (Supp. 86-4).

R15-4-508. Valuation of construction work in progress, non-capitalized leases, and rents

A. To develop the final value of the unit, the value of the operating properties from R15-4-507 must be increased by the value of construction work in progress and by the proprietary value of non-capitalized leases and rents used as an integral part of the operating unit as defined in R15-4-502(22).

B. The value to be added for construction work in progress shall be the total book value of the account, unless extraordinary circumstances warrant discounting all or part of the account.

C. The value of rented and leased property as defined in R15-4-502(22) shall be the rent and lease expenses for the year preceding the valuation date, capitalized at the industry rate for earnings before interest, income taxes, and depreciation.

Historical Note
Adopted effective August 6, 1986 (Supp. 86-4).
Amended subsections (A) and (C) effective February 22, 1989 (Supp. 89-1).

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

(Authority: A.R.S. § 42-104)

The provisions set forth in these rules became effective August 1, 1976, unless otherwise noted in the Historical Note following the rule.

ARTICLE 1. RETAIL CLASSIFICATION

New Article 1, consisting of Section R15-5-151, adopted effective April 15, 1993 (Supp. 93-2).

Former Article 1, consisting of Sections R15-5-101 through R15-5-104, repealed effective April 13, 1987.

ARTICLE 2. INTRODUCTION

ARTICLE 3. REPEALED

ARTICLE 4. AMUSEMENT CLASSIFICATION

ARTICLE 17. RESTAURANT CLASSIFICATION

ARTICLE 18. SALES TAX -- RETAIL CLASSIFICATION

ARTICLE 18.1. SALES OF FOOD

ARTICLE 19. REPEALED

ARTICLE 20. GENERAL

ARTICLE 21. UTILITIES CLASSIFICATION

ARTICLE 22. SALES TAX -- ADMINISTRATION

ARTICLE 23. USE TAX

ARTICLE 24. REPEALED

ARTICLE 25. RENTAL OCCUPANCY TAX

ARTICLE 26. RENTAL OCCUPANCY TAX -- ADMINISTRATION

ARTICLE 1. RETAIL CLASSIFICATION

R15-5-101. Sales for Resale or Lease

A. Gross receipts from the sales of tangible personal property to be resold by the purchaser in the ordinary course of business are not taxable under the retail classification.

B. Gross receipts from the sales of tangible personal property to be leased out by a person in the business of leasing such personal property are not taxable under the retail classification.
1. Gross receipts from the sale of tangible personal property to a lessor of real property are taxable if the tangible personal property is incorporated into, or leased in conjunction with, the real property; and
2. The rental of the tangible personal property is not separately stated as part of the real property lease transaction.

C. Gross receipts from the sale of repair or replacement parts for tangible personal property which is to be leased out by a person engaged in the business of leasing such tangible personal property are not taxable under the retail classification.

D. The seller may establish the deduction for a sale for resale or lease by obtaining documentation from the purchaser pursuant to statutory provisions and to R15-5-2214.

Historical Note
Amended effective November 7, 1978 (Supp. 78-6).
Renumbered from R15-5-1811 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-102. Casual Sales

Gross receipts from a casual sale, as defined in R15-5-2001, are not taxable under the retail classification.

Historical Note
Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-103. Sale of Business Enterprises

Gross receipts from the sale of a business as a going concern shall not be taxable if the sale is for the business as an operating enterprise.

Historical Note
Renumbered from R15-5-1817 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-104. Service Businesses

A. Gross receipts from the sales of tangible personal property to a person engaged in a professional or personal service occupation or business are taxable if the tangible personal property is used or consumed in the performance of the service or is sold only as an inconsequential element of the nontaxable service provided.

B. Gross receipts from the sale of tangible personal property, by a person engaged in a professional or personal service occupation or business, shall not be taxable if the property is sold only as an inconsequential element of the nontaxable service provided.

C. Sales of tangible personal property shall be considered inconsequential elements of the service if:
1. The purchase price of the tangible personal property to the person rendering the services represents less than 15% of the charge, billing, or statement rendered to the purchaser in connection with the transaction;
2. At the time of the sale, the tangible personal property transferred is not in a form which is subject to retail sale; and
3. The charge for the tangible personal property is not separately stated on the invoice.

D. A person engaged in both a retail business and a service business shall keep records of purchases of tangible personal property sufficient to establish whether the property was resold as a taxable retail sale.

Historical Note
Renumbered from R15-5-1805 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-105. Services in Connection with Retail Sales

A charge in connection with a retail sale is taxable unless the charge for service is shown separately on the sales invoice and records.

Historical Note
Renumbered from R15-5-1815 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-106. Finance Charges in Connection with Retail Sales

Gross receipts from finance, carrying charges, or interest charges incurred in connection with a retail sale of tangible personal property shall not be taxable if:
1. The charges are separately stated as part of the sales transaction; and
2. The charges result from the sale of such property on credit or under an installment contract.

Historical Note
Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-107. Reserved

R15-5-108. Reserved

R15-5-109. Reserved

R15-5-110. Lease-purchase Agreements

A. Gross income derived from the leasing of tangible personal property under a lease-purchase agreement shall be taxable under the personal property rental classification.

B. Payments received after the conversion from a lease to a purchase are taxable under the retail classification.

C. Gross receipts from the sale of tangible personal property shall include conversion charges paid or incurred at the time the lease is converted to a purchase.

Historical Note
Renumbered from R15-5-1809 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-111. Consignment Sales

A. The following definitions apply for purposes of this rule:
1. "Consignee" is the party which is in the business of selling tangible personal property belonging to a "consignor".
2. "Consignor" is the party with the legal right to contract the services of the consignee to sell tangible personal property on behalf of the consignor.

B. Gross receipts from consignment sales are subject to tax under the retail classification.

C. A consignee shall obtain a transaction privilege tax license prior to engaging in the business of making consignment sales.

Historical Note
Renumbered from R15-5-1808 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-112. Sales by Auctioneers

A. Gross receipts from the sales of tangible personal property by an auctioneer are subject to tax under the retail classification.

B. An auctioneer shall obtain a transaction privilege tax license prior to conducting an auction.

Historical Note
Renumbered from R15-5-1834 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-113. Sales by Trustees, Receivers, and Assignees

A. Gross receipts from the sale of tangible personal property by a trustee, receiver, or assignee shall be taxable if the sale of the property in the hands of the owner would have been taxable.

B. Gross receipts from the sale of tangible personal property by a trustee, receiver, or assignee shall not be taxable if the sale of the property in the hand of the owner would have been exempt.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-114. Reserved

R15-5-115. Reserved

R15-5-116. Reserved

R15-5-117. Reserved

R15-5-118. Reserved

R15-5-119. Reserved

R15-5-120. Exempt Sales of Machinery or Equipment

A. Machinery or equipment used in manufacturing or processing includes machinery or equipment that constitutes the entire primary manufacturing or processing operation from the initial stage where actual processing begins through the completion of the finished end product, processing, finishing, or packaging of articles of commerce. Manufacturing is the performance as a business of an integrated series of operations which place tangible personal property in a form, composition, or character different from that in which it was acquired and transforms it into a different product with a distinctive name, character, or use.

B. Gross receipts from the sale of repair or replacement parts for exempt machinery or equipment are not subject to the tax under the retail classification. Repair or replacement parts are defined as those individual component and constituent items which, together, comprise exempt machinery or equipment.

C. In establishing the exempt sale of machinery or equipment, the seller shall keep adequate documentation, pursuant to statutory requirements and as delineated in R15-5-2214, for the statutorily required period of time

Historical Note

Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6). Amended paragraphs (9) and (10) effective March 18, 1981 (Supp. 81-2). Renumbered from R15-5-1822 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-121. Sales of Fuel Used in Manufacturing

The sale of fuel used or consumed in a manufacturing process is taxable. The fuel is not considered to be incorporated into the manufactured product.

Historical Note

Renumbered from R15-5-1830 effective August 9, 1993 (Supp. 93-3).

R15-5-122. Articles Incorporated into a Manufactured Product

A. Sales of articles to be incorporated into a fabricated or manufactured product are considered to be sales for resale and, therefore, exempt. For example, the sale of wood to a furniture manufacturer is a sale for resale.

B. In order for the exemption to apply, the materials must actually become a part of the finished product. Supplies which are consumed in the manufacturing process do not qualify.

Historical Note

Renumbered from R15-5-1839 effective August 9, 1993 (Supp. 93-3).

R15-5-123. Sale of Tools and Supplies to Businesses

The sale of tools, supplies, and other articles to be used or consumed by persons in the operation of their businesses, and not for resale, are taxable as retail sales.

Historical Note

Renumbered from R15-5-1849 effective August 9, 1993 (Supp. 93-3).

R15-5-124. Reserved

R15-5-125. Reserved

R15-5-126. Manufacturing Labor

The cost of labor employed in manufacturing, processing, or fabricating tangible personal property shall not be allowed as a deduction from the gross receipts derived from a sale of such property.

Historical Note

Renumbered from R15-5-1848 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-127. Sales of Fuel

A. For purposes of this rule, "use fuel" means fuel other than motor vehicle fuel, as defined in A.R.S. § 28-101(28). Diesel fuel is a use fuel. Gasoline is a motor vehicle fuel.

B. Gross receipts from the sale of use fuel are taxable under the retail classification if the use fuel is not used to propel vehicles on the streets, roads, and highways of this state.

C. Retail sales of jet fuel are taxable under the jet fuel excise and use tax classification.

Historical Note

Renumbered from R15-5-3004 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-128. Electric Power Transmission and Distribution

A. Gross receipts from the sale of machinery, equipment, or transmission lines for direct use in a transmission system are deductible from the tax base. Gross receipts from the sale of machinery, equipment, or lines for use in a distribution system are taxable.

B. Machinery and equipment used to facilitate the production of voltage up to and including 34,500 volts shall be considered part of a distribution system.

1. Gross receipts from the sale of such equipment are subject to transaction privilege tax.
2. If tangible personal property was purchased as exempt, subsequent nonexempt use shall subject the gross purchase price to use tax according to statutory provisions.

C. Machinery and equipment used to facilitate the production of voltage above 34,500 volts shall be categorized as part of a transmission or distribution system based on the following definitions.

1. "Transmission system" means:
   a. All land, conversion structures, and equipment employed at a primary source of supply to change the voltage or frequency of electricity for the purpose of its more efficient or convenient transmission;
   b. All land, structures, lines, switching and conversion stations, high tension apparatus and their control and protective equipment between a generating or receiving point and the entrance to a distribution center or wholesale point; and

c. All lines and equipment whose primary purpose is to augment, integrate, or tie together the sources of power supply.

2. "Distribution system" means all land, structures, conversion equipment, lines, line transformers, and other facilities employed between the primary source of supply and of delivery to customers, which are not includible in a transmission system whether or not such land, structures, and facilities are operated as part of a transmission system or as part of a distribution system. Stations which change electricity from transmission to distribution voltage shall be classified as distribution stations.

3. "Primary source of supply" means a generating station or point of receipt in the case of purchased power.

4. Dual-use equipment shall be designated as follows:

a. If poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys, and rights-of-way shall be classified as a transmission system. The conductors, crossarms, braces, grounds, tiewire, insulators, and other similar tangible personal property shall be classified as transmission or distribution facilities, according to the purpose for which they are used.

b. If underground conduit contains both transmission and distribution conductors, the underground conduit and the right-of-way shall be classified as a distribution system. The conductors shall be classified as transmission or distribution facilities according to the purpose for which they are used.

c. Based on statutory provisions, transformers and control equipment utilized operationally at transmission substation sites are considered to be a part of a transmission system and, therefore, are exempt from transaction privilege and use tax.

D. Machinery, equipment, or transmission lines for direct use in a transmission system are only those which are recorded as being part of a transmission system in accordance with the definitions in subsection (C).

1. Gross receipts from the sale of such equipment are exempt from the tax.

2. If such machinery and equipment is removed from inventory to be used as part of a distribution system, the purchase price is subject to use tax.

Historical Note
Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-129. Discounts, Refunds, and Coupon Redemption

A. Cash discounts allowed the purchaser for timely payment are permissible as deductions from the sale price.

B. Refunds in cash or credit given on returned merchandise are considered to be a reduction of sales.

C. When coupons issued by a manufacturer are redeemed by a retailer the amounts refunded to the purchaser are not permissible as deductions from the selling price of articles sold by the retailer. In these cases, the gross selling price is taxable.

D. Coupons issued by a retailer and later redeemed by the retailer as a discount on the price of merchandise sold by him are considered a reduction of the selling price. In such cases the net selling price is subject to tax.

Historical Note
Renumbered from R15-5-1840 effective August 9, 1993 (Supp. 93-3).

R15-5-130. Reserved

R15-5-131. Lay-away Sales

Gross receipts from lay-away agreements shall be taxable when title or possession transfers to the purchaser or at the time receipts from the transaction are determined to be nonrefundable, whichever occurs first.

Historical Note
Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-132. Retail Sales with Trade-ins

A. When a retailer accepts tangible personal property as a trade-in for part or full payment on the sale of tangible personal property, the dollar amount of the payment represented by the trade-in is deductible from the retailer's gross receipts from that sale.

B. A trade-in deduction shall be limited to the amount of the retailer's gross receipts on that sale.

C. When the property traded in is subsequently sold at retail, the gross receipts from the transaction are taxable.

Historical Note
Renumbered from R15-5-1818 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-133. Delivery Charges in Connection with Retail Sales

A. A charge by a retailer for delivery from the retailer's location to the purchaser's location, if separately stated on the sales invoice, is not taxable.

B. When the freight cost is incurred any time prior to the time of the retail sale, such cost is part of the gross sale and, therefore, subject to the tax.

Historical Note
Renumbered from R15-5-1820 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-134. Sales of Containers, Bottles, and Labels

A. The sale of containers and bottles is considered a sale for resale only when the purchaser is to transfer the containers with their contents in future sales.

B. In cases where the containers are not subsequently sold as part of the merchandise, such sales are deemed to be taxable retail sales.

C. The sale of labels to a purchaser who affixes them to nonreturnable containers to be resold is considered to be a sale for resale and is not taxable.

D. In cases where the containers are returnable and a new label is to be affixed, each time the container is refilled, the sale of the labels is also considered to be a sale for resale.

E. The sale of analysis tags or other labels to be attached to containers of feed and sold along as part of the article is a sale for resale.

F. However, the sale of items such as price tags, shipping tags, and advertising matter used in connection with the subsequent sale is taxable as a retail sale.

Historical Note
Renumbered from R15-5-1829 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-135. Sales of Restaurant Accessories

A. Gross receipts from the sale of disposable containers, paper napkins, and other similar food accessories to persons engaged in the restaurant business, which are transferred by the restaurant in the ordinary course of business to facilitate the consumption of the food, drink, or condiment provided, shall be considered gross receipts from sales for resale.

B. Gross receipts from the sale of matchbooks, advertisement fliers, and other similar tangible personal property to persons engaged in the restaurant business that are transferred by the

restaurant for the convenience, operation, or benefit of the restaurant business are taxable.

Historical Note
Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-136. Returnable Containers

A. Gross receipts from deposits on sales of returnable containers which contain taxable food shall be taxable.

B. Deposit refunds paid to purchasers on the return of such containers shall be deductible from the retailer's tax base in the month refunded.

C. Gross receipts from deposits received on returnable containers which contain non-taxable food shall not be taxable. Therefore refunds paid on such deposits shall not reduce the tax base.

Historical Note
Renumbered from R15-5-1833 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-137. Warranty or Service Contracts

A. For purposes of this rule, a "warranty or service provision" means a manufacturer's or vendor's warranty provision which automatically, and for no extra charge, applies to the tangible personal property when purchased.

B. Gross receipts from the sale of warranty or service contracts shall not be taxable if such contracts are sold as a distinct and separate item and the charge for the warranty or service contract is stated separately on the sales invoice.

C. A warranty or service provision shall not be considered a warranty or service contract under A.R.S. § 42-1310.01(A). An exclusion from gross receipts shall not be allowed for a warranty or service provision on the sale of tangible personal property when such property cannot be sold without the acceptance of the warranty or service provision.

Historical Note
Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-138. Tangible Personal Property Used in Conjunction with Warranty or Service Contracts

A. For purposes of this rule, "covered" tangible personal property is that property which is included in the charge for the warranty or service contract and the warranty or service contract holder is not additionally charged for such property.

B. Tangible personal property sold in conjunction with the servicing of a warranty or service contract, but not covered by such a contract, is a sale of tangible personal property and, as such, shall be subject to tax under the retail classification, unless statutorily exempt.

C. Tangible personal property which is covered under a warranty or service contract, and used in the servicing of such a contract, is subject to use tax unless transaction privilege tax was paid when the tangible personal property was acquired or unless otherwise statutorily exempt.

Historical Note
Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-139. Reserved

R15-5-140. Reserved

R15-5-141. Reserved

R15-5-142. Reserved

R15-5-143. Reserved

R15-5-144. Reserved

R15-5-145. Reserved

R15-5-146. Reserved

R15-5-147. Reserved

R15-5-148. Reserved

R15-5-149. Reserved

R15-5-150. Photography

A. The following definitions apply for purposes of this rule:
1. "Photographer" means a person who engages in the business of photography.
2. "Photography" means the operation of taking, developing, processing, or printing pictures, prints, or images on or from film, video, or other similar media.

B. Gross receipts derived from sales of photography by a photographer are taxable under the retail classification.

C. Developing of films and making of prints of pictures taken by others are taxable. Developing and printing for drugstores and other retailers are sales for resale.

Historical Note
Renumbered from R15-5-1836 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-151. Artists

A. Gross receipts from the sale of paintings, drawings, etchings, sculptures, craftwork, other artwork or reproductions of such items to final consumers shall be taxable under the retail classification if the person is making regular sales of these items.

B. Gross receipts from the sale of paints, canvasses, frames, sculpture ingredients, and other items which will become an integral part of the finished product shall not be taxable if sold to a creating artist who is regularly engaged in the business of creating and selling paintings, drawings, etchings, sculptures, craftwork, other artwork, or reproductions of such items. Sales of brushes, easels, tools, and similar items to be consumed by the creating artist shall be taxable.

C. Gross receipts from the sale by the creating artist of a painting, drawing, etching, sculpture, or a piece of craftwork that is not a reproduction of an original work shall not be taxable if:
1. The sale is a casual sale pursuant to the definition in R15-5-1812; or
2. The sale is of commissioned artwork by an individual artist. For purposes of this rule, "commissioned artwork" is a custom, one-of-a-kind art creation made by the individual artist pursuant to the particular requirements of a specific purchaser.

Historical Note
Adopted effective April 15, 1993 (Supp. 93-2). Section heading amended effective August 9, 1993 (Supp. 93-3).

Editor's Note: R15-5-1812, referenced in subsection (C)(1) above, was repealed. Please refer to R15-5-2001 for information about casual sales.

R15-5-152. Tangible Personal Property Used in Soil Remediation Activities

The gross receipts from the sale of tangible personal property incorporated or fabricated into any real property, structure, project, development or improvement under a contract specified in A.R.S. § 42-1310.16 (B)(6) are exempt from tax. The gross receipts from the sale of tangible personal property used in soil remediation activities but not incorporated or fabricated into any real property, structure, project, development or improvement are taxable.

Historical Note
Adopted effective December 11, 1998 (Supp. 98-4).

R15-5-153. Four-inch Pipes or Valves

Gross receipts from the sale of pipes, valves, or fire hydrants with an inside diameter of four inches or more are deductible from the tax base if the pipes, valves, or fire hydrants are to be used to transport oil, natural gas, artificial gas, water, or coal slurry.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-154. Data Processing Equipment and Software

A. Income from services rendered in whole or in part in connection with the sale of data processing equipment is exempt, including income from charges imposed for professional and technological services such as analysis, design, support engineering services, classroom instruction and data conversion services.

B. Income from the multiple use of data processing equipment where no single customer has exclusive use of the equipment for a fixed period of time, or where the customer does not exclusively control all manual operations necessary to operate the equipment is nontaxable service income.

C. Except as provided in subsection (D), the gross receipts derived from the sale of electronic data processing programs are taxable.

D. The gross receipts derived from charges imposed for the original creation of an electronic data processing program or the modification of a canned electronic data processing program for the specific use of an individual customer are nontaxable service activities.

E. When income is received from both the sale of tangible personal property and exempt services, the charges for each shall be separately stated on billings and invoices or otherwise clearly reflected in the books and records of the taxpayer. If not so separately stated, the gross income from such transactions is taxable.

Historical Note

Renumbered from R15-5-1853 effective August 9, 1993 (Supp. 93-3).

R15-5-155. Reserved

R15-5-156. Sales of Prescription Drugs and Prosthetic Appliances

A. For purposes of this rule, the following definitions apply:

1. "Drugs on a prescription" means those substances which can only be dispensed on the direction of a member of the medical, dental, or veterinary profession, who is licensed by law to administer such drugs, and which cannot be purchased without such authorization. A legend drug is considered a drug on a prescription.
2. "Hearing aid" means any wearable device designed for aiding or compensating for defective human hearing including parts, attachments, accessories, and earmolds.
3. A "legend drug" is a drug which bears the statement *CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT PRESCRIPTION.*
4. "Nonprescription drugs" means a substance which can be purchased without a prescription even though recommended by a member of the medical, dental, or veterinarian profession.
5. "Prescription drugs" are drugs on a prescription.
6. "Prescription eyeglasses" includes frames and component parts if purchased for use with prescription lenses.
7. "Prosthetic appliance" means an artificial device which fully or partially replaces a part or function of the human body or increases the acuity of a sense organ.

B. Gross receipts from sales of the following items are deductible from the tax base:

1. Drugs on a prescription.
2. Medical oxygen, pursuant to statute.
3. Insulin, insulin syringes, and glucose strips whether or not prescribed.
4. Prosthetic appliances prescribed or recommended by a statutorily authorized individual.
5. Durable medical equipment, pursuant to statute.
6. Prescription eyeglasses and contact lenses.
7. Hearing aids. Batteries and cords do not qualify as exempt.

C. Unless otherwise stated, the sale of component and repair parts for any property included in this rule is not taxable.

D. If a prescription or recommendation is required to purchase the tangible personal property, the required prescription or recommendation shall be in writing and shall be maintained as part of the vendor's records.

E. Gross receipts from the sale of nonprescription drugs and other medical supplies to doctors, dentists, or veterinarians are taxable unless otherwise exempt.

1. Gross receipts from the sale of nonprescription drugs and other medical supplies to doctors, dentists, and veterinarians are not taxable if the tangible personal property qualifies as a sale for resale and the doctor, dentists, or veterinarian is a retailer in the business of reselling such property.
2. Gross receipts from the sale of prescription drugs, for use in the course of treating patients, are not taxable if the prescription drugs are sold to a doctor, dentist, or veterinarian who is licensed by law to administer prescription drugs.
3. Gross receipts from the sale of prescription drugs are not taxable if the prescription drugs are sold to an organization where the prescription drugs are used in the course of treating patients and are administered under the direction of a doctor, dentist, or veterinarian who is licensed by law to administer such drugs.

Historical Note

Renumbered from R15-5-1819 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-157. Membership Fees

A. Membership, admission, or other fees charged by a limited-access retail business shall be considered part of the taxable gross income of the business activity.

B. For purposes of this rule, "a limited-access retail business" means a business which does not sell to the general public but which charges a membership fee or a membership due in order to obtain access to the business or to obtain discounts or preferential treatment in the purchase or rental of tangible personal property from or through the business.

C. Gross income shall not include separately billed amounts paid to secure ownership interests or rights in the business which can be transferred or assigned.

Historical Note

Renumbered from R15-5-3036 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-158. Reserved

R15-5-159. Reserved

R15-5-160. Reserved

R15-5-161. Reserved

R15-5-162. Reserved

R15-5-163. Reserved

R15-5-164. Reserved

R15-5-165. Reserved

R15-5-166. Reserved

R15-5-167. Reserved

R15-5-168. Reserved

R15-5-169. Reserved

R15-5-170. Interstate and Foreign Transactions

A. Gross receipts from sales of tangible personal property made in interstate or foreign commerce are deductible from the tax base if all of the following apply:
1. The order is received from a location outside of Arizona; and
2. The retailer ships or delivers the tangible personal property to a location outside of Arizona for use outside of Arizona.

B. In meeting the above requirements, if delivery is made by the retailer to a common carrier for transportation to a location outside Arizona, the common carrier is deemed to be the agent of the retailer for purposes of this rule regardless of who is responsible for payment of the freight charges.

C. Suitable records shall be kept to substantiate the deduction for a sale made in interstate commerce. As such, records shall identify the tangible personal property sold and the delivery destination. The following records may be sufficient to substantiate the exemption:
1. Suitable records for substantiating the receipt of an order from out-of-state may include purchase orders, letters, or written memoranda on the receipt of orders placed by telephone.
2. Suitable records for substantiating out-of-state shipments include:
   a. Internal delivery orders supported by receipts of expenses incurred in delivering the property and signed on the delivery date by the person who delivers the property;
   b. Common carrier's receipt or bill of lading;
   c. Parcel post receipt;
   d. Export declaration;
   e. Receipt from a licensed broker; or
   f. Proof of export or import signed by a customs officer.

Historical Note

Renumbered from R15-5-1814 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-171. Sales to a Common Carrier

Gross receipts from sales made to a common carrier, engaged in interstate business, for delivery by the common carrier to a location outside of Arizona and for use outside of Arizona shall not be taxable if the order is received from a location outside of Arizona and the Arizona retailer prepays the freight charge.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-172. Sales by Florists

A. Gross receipts from sales made by florists are taxable. Delivery and relay or transmittal charges, when separately stated, are deductible from the tax base.

B. Orders received by an Arizona florist from an out-of-state customer for delivery within Arizona are taxable. Orders received by an Arizona florist by an out-of-state customer for delivery out-of-state are not taxable.

C. When the florist conducts transactions through a delivery association, the following shall apply:
1. Gross receipts from sales made by an Arizona florist, where the order is subsequently transmitted to another florist for filling and delivery, whether inside or outside of Arizona, are taxable.
2. Gross receipts from sales by Arizona florists who deliver from a transmitted order of another florist, whether the ordering florist is inside or outside of Arizona, are not taxable.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-173. Sales of Property Subsequently Taken Out-of-state

Gross receipts from sales of tangible personal property by Arizona vendors made to purchasers who subsequently take the property out-of-state do not qualify as exempt unless otherwise specifically exempted by statute.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-174. Sales to Non-U.S. Citizens

Gross receipts from sales to non-U.S. citizens are subject to the tax unless otherwise exempt.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-175. Sales to Nonresidents Temporarily Within this State

A. For purposes of this rule, "nonresident" means:
1. An individual who is not a resident for Arizona income tax purposes; or
2. An entity which has no business location or business nexus in Arizona.

B. Gross receipts from the sale of tangible personal property to a nonresident of Arizona who is temporarily within this state are exempt from the tax if:
1. The vendor ships or delivers the tangible personal property out of this state by common carrier, United States mail, or the vendor's own conveyance; and
2. The tangible personal property is not used in Arizona.

C. To substantiate the exemption for a sale to a nonresident temporarily within the state, the vendor shall obtain a completed exemption certificate or a written statement from such a buyer certifying that the buyer is not a resident of Arizona and that the property purchased is for use outside of Arizona.
1. Such a statement or certificate shall be maintained as part of the records of the vendor for the required statutory period.
2. The vendor may use the exemption certificate prescribed by the Department.

D. Suitable records, as delineated in R15-5-170, shall be kept by the vendor to establish out-of-state shipments.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-176. Aircraft, Instruments, and Related Accessories

A. Gross receipts from the sale of airplanes, navigational and communication instruments, other accessories, and related equipment are deductible from the tax base if such property:
1. Is not used in this state except to remove such property from this state; and
2. Is sold to persons who are not residents of this state.

B. "Persons who are not residents of this state" means:
1. An individual who is not a resident for Arizona income tax purposes;
2. An entity, other than a corporation, which has no business location or business nexus in Arizona; or
3. A corporation which is not incorporated in Arizona and whose principal corporate office is not located in Arizona even though it may have a branch office in Arizona.

C. To substantiate the exemption for a sale to a nonresident, the vendor shall obtain a completed exemption certificate or a written statement from such a buyer certifying that the buyer is not a resident of Arizona and that the property purchased is for use outside of Arizona:
1. Such a statement or certificate shall be maintained as part of the records of the vendor for the required statutory period.
2. The vendor may use the exemption certificate prescribed by the Department.

Historical Note
Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-177. Reserved

R15-5-178. Reserved

R15-5-179. Reserved

R15-5-180. Sales by Businesses in Federal Areas
Gross receipts from sales by businesses which are not operated by or as an agency of the Federal Government, located on military bases or other federal areas, are taxable.

Historical Note
Renumbered from R15-5-1825 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-181. Governmental Organizations
A. Gross receipts from the sale of tangible personal property to the state or its political subdivisions are taxable unless otherwise exempt. Gross receipts from the sale of tangible personal property to the Federal Government or its departments and agencies are taxable at the rate prescribed by statute, unless otherwise exempt.

B. Gross receipts from the sale of tangible personal property by the state or its political subdivisions, when acting in a proprietary capacity, are taxable unless otherwise exempt.

C. Gross receipts from the sale of tangible personal property by the Federal Government are not taxable.

Historical Note
Renumbered from R15-5-1803 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-182. Nonprofit Organizations
A. Gross receipts from the sale of tangible personal property to nonprofit churches, schools, and other nonprofit organizations are taxable unless otherwise exempt.

B. Gross receipts from the sale of tangible personal property by a charitable nonprofit organization, recognized as such for income tax purposes by the Internal Revenue Service and the Department, are not taxable.

C. If an organization wishes to obtain tax-exempt status by being recognized by the Department as a nonprofit charitable organization, it shall submit a letter to the Department requesting tax-exempt status and shall include a copy of its Internal Revenue Service recognition as such an organization.

D. For purposes of the statutory exemption and this rule, the Internal Revenue Service recognition of a charitable nonprofit organization is defined in Internal Revenue Code § 501(c)(3).

Historical Note
Renumbered from R15-5-1804 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-183. Exempt Sales to Health Organizations
A. Gross receipts from the sale of tangible personal property to qualifying hospitals, qualifying health care organizations, rehabilitation programs for mentally or physically handicapped persons, and qualifying community health centers are exempt from tax if such purchases are exempt from tax pursuant to statutory provisions.

B. The Department may, upon review of the written request and any other information requested by the Department to make a proper determination, provide an Exemption Letter to organization meeting the statutory criteria. The Exemption Letter shall be valid for a period of 12 months from the first day of the month following the issue date of the Exemption Letter unless the organization's tax exempt status changes prior to the end of the 12-month period, or the organization misrepresented or omitted material information in its exemption request.

C. Qualifying hospitals, qualifying health care organizations, rehabilitation programs for mentally or physically handicapped persons, and qualifying community health centers shall annually submit to the Department a written request for an Exemption Letter. The request shall be submitted at least 30 days prior to the first day of the exemption period. For purposes of this rule, "exemption period" means the 12-month period beginning on the first day of the month following the issue date of the Exemption Letter or the 12-month period requested by the organization.
1. Qualifying hospitals shall attach to their annual exemption request a copy of their current license issued by the Department of Health Services.
2. Qualifying health care organizations shall attach to their exemption request letter the statutorily required annual financial audit and a copy of their Internal Revenue Code 501(c) recognition unless the Department has previously received a copy of this recognition.
3. Rehabilitation programs for mentally or physically handicapped persons shall attach to their exemption request a copy of their Internal Revenue Code 501(c)(3) recognition unless the Department has previously received a copy of this recognition.
4. Qualifying community health centers shall attach to their exemption request documentation supporting the statutory criteria and a copy of their Internal Revenue Code 501(c)(3) recognition unless the Department has previously received a copy of this recognition.

Historical Note
Renumbered from R15-5-1821 and amended effective August 9, 1993 (Supp. 93-3). Amended effective April 21, 1995 (Supp. 95-2).

ARTICLE 2. INTRODUCTION

R15-5-201. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-202. Renumbered

Historical Note
Section R15-5-202 renumbered to R15-5-2001 effective October 14, 1993 (Supp. 93-4).

R15-5-203. Repealed

Historical Note
Repealed effective October 14, 1993 (Supp. 93-4).

R15-5-204. Renumbered

Historical Note
Section R15-5-204 renumbered to R15-5-2002 effective October 14, 1993 (Supp. 93-4).

R15-5-205. Repealed

Historical Note
Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-206. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-207. Repealed

Historical Note
Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-208. Repealed

Historical Note
Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-209. Repealed

Historical Note
Amended effective November 7, 1978 (Supp. 78-6). Amended effective March 18, 1981 (Supp. 81-2). Renumbered as Section R15-5-3023 effective August 26, 1987 (Supp. 87-3). Renumbered and amended in error; Section R15-5-209 is reprinted herewith as it was amended effective March 18, 1981 (Supp. 88-3). Repealed effective October 14, 1993 (Supp. 93-4).

R15-5-210. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-211. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-212. Renumbered

Historical Note
Emergency rule adopted effective April 10, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days; emergency rule readopted with changes effective June 18, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency rule readopted with changes effective September 19, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Permanent rule adopted with changes effective December 14, 1990 (Supp. 90-4). Renumbered to Section R15-5-2215 effective October 14, 1993 (Supp. 93-4).

ARTICLE 3. REPEALED

R15-5-301. Repealed

Historical Note
Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-302. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-303. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-304. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-305. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-306. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-307. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

ARTICLE 4. AMUSEMENT CLASSIFICATION

R15-5-401. Repealed

Historical Note
Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-402. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-403. Amusement Devices
Gross proceeds of sales or gross income from the operation of coin-operated and other devices which provide amusement are included in the tax base under the amusement classification. Examples of such devices include: devices that play prerecorded music, electronic games, pinball games, and billiard tables.

1. The tax base from the business of operating amusement devices is the gross amount received from the amusement devices without deduction for commissions paid, rental cost for the equipment, or other expenses.
2. The individual having direct control of the funds generated by the amusement devices shall pay the tax to the Department.

Historical Note
Amended effective September 22, 1997 (Supp. 97-3).

R15-5-404. Other Income
Gross receipts from the sale of programs, souvenirs, or any other items of tangible personal property are included in the tax base under the retail classification.

Historical Note
Amended effective April 21, 1995 (Supp. 95-2). Amended effective September 22, 1997 (Supp. 97-3).

R15-5-405. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-406. Health or Fitness Establishments and Private Recreational Establishments

A. The operator of a "health or fitness establishment" or a "private recreational establishment", as defined in A.R.S. § 42-1310.13(C), shall exclude from the tax base under the amusement classification all gross proceeds of sales or gross income from membership fees and initiation fees which provide for the right to use the establishment, or any portion of the establishment, for 28 days or more, and fees charged for the use of

the establishment by bona fide accompanied guests of members. Any other fees for the use of health or fitness establishment or a private recreational establishment, or any portion of such an establishment, are included in the tax base of the amusement classification.

B. The Department shall not consider the gross proceeds of sales or gross income derived from other businesses that are on the premises of a health, fitness, or recreational business when determining whether a health, fitness, or recreational business meets the qualifications of a "health or fitness establishment" or a "private recreational establishment" if the other businesses are separate and independent from the health, fitness, or recreational business. Whether the other businesses are separate and independent depends upon the facts in each case. The Department considers several factors in making this determination including but not limited to the following:

1. Whether the business is open to both members and nonmembers;
2. Whether the primary purpose of the business is closely related to the primary purpose of the health, fitness, or recreational business;
3. Whether the business could exist without the health, fitness, or recreational business;
4. Whether the business shares assets or employees with the health, fitness, or recreational business.

Historical Note
Amended effective September 22, 1997 (Supp. 97-3).

R15-5-407. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-408. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-409. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

ARTICLE 5. REPEALED

R15-5-501. Repealed

Historical Note
Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-502. Repealed

Historical Note
Repealed effective January 16, 1997 (Supp. 97-1).

R15-5-503. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-504. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-505. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-506. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

ARTICLE 6. PRIME CONTRACTING CLASSIFICATION

R15-5-601. Taxpayer Bonds for Contractors

A. For the purpose of this rule:

1. The principal place of business shall be Arizona if the licensee has continuously operated a facility with at least one full-time employee in Arizona for 12 consecutive months preceding the determination.
2. A surety bond shall include a bond issued by a company authorized to execute and write bonds in Arizona as a surety or composed of securities or cash which are deposited with the Department of Revenue.

B. The businesses subject to these bonds are grouped in accordance with the standard industry classifications by average business activity. The business classes and bond amounts are as follows:

1. Two thousand dollars for:
   a. General contractors of residential buildings other than single family;
   b. Operative builders;
   c. Plumbing, air conditioning, and heating, except electric;
   d. Painting, paper hanging;
   e. Decorating;
   f. Electrical work;
   g. Masonry stonework and other stonework;
   h. Plastering, drywall, acoustical and insulation work;
   i. Terrazzo, tile, marble and mosaic work;
   j. Carpentry;
   k. Floor laying and other floor work;
   l. Roofing and sheet metal work;
   m. Concrete work;
   n. Water well drilling;
   o. Structural steel erection;
   p. Glass and glazing work;
   q. Excavating and foundation work;
   r. Wrecking and demolition work;
   s. Installation and erection of building equipment;
   t. Special trade contractors; and
   u. Manufacturers of mobile homes.
2. Seven thousand dollars for:
   a. General contractors of single family housing;
   b. Water, sewer, pipeline, communication and powerline construction.
3. Seventeen thousand dollars for:
   a. General contractors of industrial buildings and warehouses;
   b. General contractors nonresidential buildings other than single family;
   c. Highways and street construction except elevated highways.
4. Twenty-two thousand dollars for heavy construction.
5. One-hundred two thousand dollars for bridge, tunnel and elevated highway construction.

C. Except as provided in subsection (D) of this rule, any applicant whose principal place of business is outside Arizona or who has conducted business in Arizona for less than one year shall post a bond before the transaction privilege tax license shall be issued.

D. Any taxpayer subject to bonding requirements may submit a written request to the Director of the Department of Revenue for an exemption from the bond. The exemption request shall provide at least one of the following:

1. Any taxpayer who has been actively engaged in business for at least two years immediately preceding the exemption request may submit statements from an authorized state employee from each state in which the business has

been licensed in the last two years verifying that the taxpayer has, for at least two years immediately preceding the date of the statement, made timely payment of all sales taxes and other transaction privilege taxes incurred.

2. Two-year reporting history as described above in paragraph (1) and an explanation of good cause for late or insufficient payment of the tax;
3. Documentation which verifies that no potential for Arizona tax liability exists;
4. Bond for a previously issued Arizona transaction privilege license that adequately covers the licensee's expected transaction privilege tax liability for Arizona for both the previously issued license and for this license.

E. The bond shall not expire prior to two years after the transaction privilege license is issued. Upon lapse or forfeiture of any bond by any licensee, the licensee shall deposit with the Department another bond within five business days of the licensee's receipt of written notification by the Department.

F. Any licensee, who has had a bond posted for at least two years and fulfills any exception listed in subsection (D), or whose principal place of business becomes Arizona, may request a written waiver and that the bond be returned.

Historical Note

Former Section R15-5-601 repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-601 renumbered from R15-10-202 (Supp. 94-1).

R15-5-602. General

A. The tax under this classification is imposed upon the gross income derived from the contracting activity.

B. Contracts executed by contractors before 6/1/74 are taxed at the combined rate of 3% rather than 4%.

C. Effective January 1, 1979, only prime contractors are liable for the tax imposed under this classification. This provision applies only to contracts entered into after December 31, 1978. For purposes of this rule, every person engaging in a contracting activity is considered to be a prime contractor unless it can be demonstrated to the satisfaction of the Department that he is not a prime contractor as determined by the definitions contained herein.

1. Subcontractors are exempt provided that such persons are not acting in the capacity of prime contractors. A subcontractor is considered to be a prime contractor, and therefore liable for the tax, if:
   a. Work is performed for and payments are received from an owner-builder.
   b. Work is performed for and payments are received from an owner or lessee of real property.
2. Subcontractors who enter into contracts or agreements with a general contractor or any other contractor carrying out the provisions of a contract entered into prior to January 1, 1979, are taxable under the regulatory provisions effective for the period prior to January 1, 1979, regardless of the dates of such agreements or contracts.
3. An owner-builder shall not be liable for the tax imposed on the contracting activity if Sales Tax has been paid on the materials purchased for incorporation into the construction. If, however, an owner-builder has not paid for the Sales Tax on such materials at the time of purchase he shall be liable to the Department for the tax on the purchase price of the materials so used. An owner-builder who sells real property which he has improved at any time on or before the expiration of twenty-four months after the improvement is completed to a condition suitable for the use or occupancy intended shall be treated as a prime contractor.

D. Every person engaging in the business of prime contracting within this state shall present to the purchaser of such contracting a written receipt of the gross income received from contracts entered into after December 31, 1978, and shall separately state the charge made for the taxes imposed under this classification.

E. All persons engaging in the business of contracting are required to obtain a Sales Tax license and to file reports on a basis to be determined by the Department whether or not any tax is payable.

Historical Note

Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6). Correction, subsection (C), paragraph (2) as filed effective November 7, 1978, unless otherwise noted (Supp. 82-1).

R15-5-603. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-604. Contracts with government agencies

Construction projects performed for the United States Government, state, cities, counties, or any agencies thereof, are taxable.

R15-5-605. Contracts with schools, churches, and other nonprofit organizations

Construction projects performed for a school, church, or other nonprofit organization, are subject to the tax.

R15-5-606. Land Clearing and Well Drilling

A. A person engaged in the business of leveling, ditching, well drilling, installing pumps in wells, and original land clearing for others is taxable under the prime contracting classification.

B. The installation of groundwater measuring devices required under A.R.S. § 45-604 and groundwater monitoring wells required by law is not taxable.

C. The excavation, removal, and transportation of contaminated soil and the treatment or disposal of the contaminated soil is not taxable.

D. The installation of structures, such as cutoff walls or caps, to contain contaminants present in ground water or soil and prevent the contaminants from reaching a location which could threaten human health or welfare or the environment is not taxable.

E. Agricultural production on improved farm lands is not taxable.

1. Agricultural production includes the following activities:
   a. Cultivating,
   b. Disking,
   c. Planting,
   d. Plowing,
   e. Seeding, and
   f. Any other activity that directly relates to the production of crops on improved farm lands.
2. Agricultural production does not include the following activities:
   a. Installation or repair of drainage or irrigation delivery systems,
   b. Construction or repair of farm buildings or structures, or
   c. Any other activity which is not directly related to the production of crops on improved farm land.

Historical Note

Amended effective December 11, 1998 (Supp. 98-4).

R15-5-607. Termite Control

A person engaged in the business of treating real property for termite control is subject to tax under the prime contracting classification.

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).
Amended effective December 11, 1998 (Supp. 98-4).

R15-5-608. Installation of equipment

A. Installation of equipment which becomes permanently attached in a plant or other structure is taxable as a contracting activity.

B. If in the performance of a contract a contractor provides and installs machinery and equipment otherwise exempt, no deduction may be claimed for such machinery or equipment. In any case, the income from the installation of exempt machinery and equipment is taxable.

C. When a contract between a builder and owner contains an agency agreement authorizing the builder to purchase exempt machinery and equipment for the account of the owner, the cost of such equipment is not deemed to be contracting income, even though it is installed by the builder.

D. Effective July 21, 1979, income from a contract, or that portion of a total contract, providing for installation and sale of solar energy devices is exempt from the tax under this classification. When a prime contractor, himself or through others, provides and installs a solar energy device, as a part of a total contract, he shall exclude from his gross income or gross proceeds of sale the total selling price of the solar energy device. The total selling price of the solar energy device shall include the cost of material and installation labor and, in addition, an appropriate portion of the overhead and reasonable profit.

E. The solar energy device exemption shall expire on December 31, 1989.

Historical Note

Amended effective November 7, 1978 (Supp. 78-6).
Amended by adding subsections (D) and (E) effective March 18, 1981 (Supp. 81-2).

R15-5-609. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-610. Repealed

Historical Note

Former Section 15-5-610 repealed, new Section R15-5-610 adopted effective March 18, 1981 (Supp. 81-2).
Repealed effective January 16, 1997 (Supp. 97-1).

R15-5-611. Repealed

Historical Note

Repealed effective March 18, 1981 (Supp. 81-2).

R15-5-612. Shovel, crane, backhoe, and concrete pumpers

A. Shovel, and backhoe operations, when provided with an operator, are taxable as contracting activities. Persons engaged in such activities are subject to tax as subcontractors as specified in R15-5-602. When such equipment is provided without an operator, the transaction is taxed as rental of personal property (see Article 15).

B. Income from crane and concrete pumping activities, provided with or without operators, is taxable as rental of personal property (see Article 15).

Historical Note

Amended effective November 7, 1978 (Supp. 78-6).

R15-5-613. Carpet installation

A. The sale and installation of all floor covering which is affixed to real property is subject to tax under the contracting activity. Persons engaged in such activities are subject to tax as subcontractors as specified in R15-5-602.

B. The sale and installation of floor covering attached to tangible personal property such as motor homes, boats, and travel trailers is taxable as a retail transaction (see Article 18).

Historical Note

Amended effective November 7, 1978 (Supp. 78-6).

R15-5-614. Distinction between contracting, retail and service activities

In order to distinguish between transactions taxed as a contracting activity rather than a retail one, the following examples are given. The governing factor is whether or not property or material is replaced in the original or existing structure, or if new materials are added.

1. Examples of contracting activities include the installation of a central air conditioning system, the replacement of an air conditioning unit, water heater, electrical wiring, roof, plumbing, landscaping; the installation of a soft water system, remodeling of a kitchen, and the installation of new appliances, wallpaper, and other fixtures.
2. Those activities taxed as retail activities consist of repairs in which the materials furnished are not incorporated into the structure. Examples: recharging refrigeration units with freon, replacement of washers in plumbing.
3. Nontaxable services include carpet cleaning, waxing and polishing, duct cleaning, lawn mowing and garden maintenance.

Historical Note

Amended effective November 7, 1978 (Supp. 78-6).

R15-5-615. Public address communication systems

Public address, communication, intercommunication, and security alarm systems installed in a structure by a contractor are taxable.

R15-5-616. Installation of cabinets

A. A cabinetmaker who constructs and installs cabinets is taxable on his gross income as a prime contractor under A.R.S. § 42-1308.

B. When a cabinetmaker acts as a subcontractor under A.R.S. § 42-1308, the activity is nontaxable.

C. A cabinetmaker who merely constructs and delivers cabinets to a contractor without installing such cabinets is deemed to be making a sale for resale, which is not taxable.

D. Construction and sale of cabinets to a final consumer without installation is a retail transaction taxable under A.R.S. § 42-1315.

Historical Note

Amended effective June 18, 1987 (Supp. 87-2).

R15-5-617. Basis of reporting

A. Contractors shall report on a progressive billing basis or cash receipts basis.

B. Unused portions of allowable deductions may be carried forward to succeeding months.

C. Home builders, speculative or otherwise, shall report as income the total selling price at the time of closing of escrow or transfer of title. Deductions pertaining to this income may not be taken prior to the time the gross income is reported.

R15-5-618. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-619. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-620. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-621. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-622. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-623. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-624. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-625. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-626. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-627. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-628. Exploratory drilling
Exploratory drilling, such as core drilling for purposes of testing, is not considered to be a contracting activity.

Historical Note
Adopted effective November 7, 1978 (Supp. 78-6).

R15-5-629. Contracts with hospitals and health service organizations
A. Income from construction contracts with hospitals and other health service organizations is subject to the tax.
B. When a contract between a builder and a qualified exempt hospital contains an agency agreement authorizing the builder to purchase tangible personal property for the account of the hospital, the cost of such property is not deemed to be contracting income, even though it is installed or incorporated into the construction project. Effective January 1, 1978, this agency agreement provision includes contracts made with qualified health service organizations (see R15-5-1821).

Historical Note
Adopted effective November 7, 1978, unless otherwise noted (Supp. 78-6).

ARTICLE 7. REPEALED

R15-5-701. Repealed

Historical Note
Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-702. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-703. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-704. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

ARTICLE 8. REPEALED

R15-5-801. Repealed

Historical Note
Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-802. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-803. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-804. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

ARTICLE 9. SALES TAX -- MINING CLASSIFICATION

R15-5-901. Repealed

Historical Note
Amended effective November 7, 1978 (Supp. 78-6).
Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-902. General
The tax is imposed on the gross income derived from the business of mining within the state.
1. Sales to retailers or others for resale are taxable under this classification. For example, sales to manufacturers or processors of mineral products, when the material is incorporated or fabricated into a manufactured or processed item are subject to the tax under this classification.
2. Sales to licensed contractors of products to be incorporated into a structure are fully exempt. However, sales to licensed contractors of products for their own use are taxable as retail sales (see Article 18).
3. Royalties paid are not deductible.

R15-5-903. Definitions
A. "Mining" means the operations involving the extraction of ores, minerals, and mineral deposits from beneath or at the surface of the earth for commercial use and includes underground, surface, and open-pit operations.
B. "Mineral products" include all substances which can be extracted from the earth. Examples include: metals, sand, gravel, shale, clay, building stone, oil, helium, and natural gas.

R15-5-904. Processing
A. The gross income from custom smelting of ores, refining of petroleum products, the production of a combination of mineral products, as well as other manufacturing or processing service charges derived from contracts with the owner of the products, is subject to tax.
B. Persons engaged in smelting of mineral products who purchase the product are taxable on the difference between the

purchase price and the selling price of the processed material, representing the value added by the smelting process.

C. Persons who mine and process the mineral products are taxable on the gross income from sales of the first marketable product. For example, a person who mines clay and processes the material into bricks is taxable on the gross income from the sale of the bricks.

R15-5-905. Products shipped out of state

A. For purposes of this rule, the term "product" shall mean those items enumerated in A.R.S. § 42-1313.

B. When any product is transported out-of-state without making a sale within this state, the market value of the material before it enters interstate commerce is the taxable base. Unless otherwise provided in subsection (D), in calculating the market value of a product shipped out-of-state, the taxpayer shall:

1. Establish the total selling price of the product at the time of sale outside this state.
2. The taxpayer having established the total selling price as provided in paragraph (1) above, may deduct from the total selling price costs incurred out-of-state which increase the value of the product. These costs include, but are not limited to:
   a. The cost of common carrier freight actually paid to the point of sale outside this state;
   b. The refining or processing cost if it occurs prior to the first sale; and
   c. The cost of sales commissions, if paid or accrued, in making the sale.

C. The value of the product shipped out-of-state shall not include the cost of processing if the processor has paid the Arizona Transaction Privilege Tax on the gross proceeds derived from the processing.

D. With the prior written approval of the Department, the taxpayer may compute the market value of products shipped out-of-state in any manner which accurately reflects the value of such material at the point it enters interstate commerce.

Historical Note

Amended effective March 18, 1981 (Supp. 81-2).
Amended effective June 18, 1987 (Supp. 87-2).

R15-5-906. Retail sale of processed products

Income derived from sales of mineral products to final consumers is taxable under the retail classification (see Article 18), and not under this classification.

R15-5-907. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-908. Cost of freight

When the sale price includes a charge for freight, from the place of production to the place of delivery, such charge is deductible. The cost of freight must be actually incurred by the seller and paid to a carrier. Delivery of products in the seller's own conveyance does not qualify for this deduction.

R15-5-909. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

ARTICLE 10. TRANSACTION PRIVILEGE TAX -- TRANSIENT LODGING CLASSIFICATION

R15-5-1001. Application of the Definition of Transient for Purposes of Taxation under the Transient Lodging Classification

A. Effective January 1, 1979, the leasing or renting of dwelling units and lodging facilities to a person shall not be taxable under the transient lodging classification if the lodging is obtained for a continuous block of time for 30 or more consecutive days except as provided under A.R.S. § 42-1310.10(B). For purposes of this rule, "person" has the same meaning as under A.R.S. § 42-1301.

B. Gross receipts from providing lodging obtained for a continuous block of time for 30 or more consecutive days shall not be taxable under the transient lodging classification from the first day of occupancy.

1. Lodging obtained for 30 or more consecutive days in increments of time for a period of less than 30 consecutive days rather than for a continuous block of time shall be taxable under the transient lodging classification except as provided under A.R.S. § 42-1310.10(B).
2. A lodger may originally acquire lodging on an incremental basis for a period of less than 30 consecutive days and subsequently change to a continuous block of time for 30 or more consecutive days; however, the lodging originally obtained on an incremental basis of less than 30 consecutive days shall remain subject to tax regardless of any subsequent action on the part of the lodger.

C. If lodging is obtained on a continuous basis for 30 or more consecutive days but the person obtaining the lodging leaves before the 30-day period ends and only pays for a period of 29 days or less, the exclusion shall not apply. The gross receipts from providing lodging for 29 days or less shall be subject to tax under the transient lodging classification.

D. The following situations are indicative of the application of the provisions in this rule:

1. A person rents a motel room on a weekly basis for 10 consecutive weeks. The total rental period is greater than 30 consecutive days; however, the method of renting by the week meets the definition of "transient". Gross receipts from renting lodging space on such a basis are subject to tax under the transient lodging classification.
2. A motion picture company contracts with a hotel to rent a block of 15 rooms for a three-month period during which filming will occur in the area. During that three-month period, a variety of crew members and actors will occupy the rooms. Any one room may have a different occupant during the three-month time period as filming progresses and different actors or crew members are involved in the production of the film. The rental by the motion picture company for the three-month period is not subject to tax under the transient lodging classification since the motion picture company contracted with the hotel to rent for a three-month period and, therefore, does not meet the definition of a transient.
3. An individual reserves a room in a rooming house for two weeks. The individual decides to stay another two weeks. The total number of days' stay is now at 28 days. Once again, the individual extends the stay by two weeks. Each time period is less than 30 days. Even though the total period of time is over 29 days, after the third extension of two weeks, the individual continues to be a transient for purposes of taxation under the transient lodging classification. If the individual had rented the room for 30 days or more after the first two weeks, gross receipts from the additional time would not be subject to tax. However, the

first two-week block of time would remain taxable since that time period falls under the definition of transient.

4. An individual is not sure how long he will be staying at a hotel so, upon registration, gets the room for 35 days. After 21 days the individual decides to leave and pays only for the 21-day stay. Gross receipts are subject to tax under the transient lodging classification. If the individual had a contractual agreement in which, regardless of length of occupancy, he was required to pay for the entire 35 days, the gross receipts from such a transaction would not be taxable.

Historical Note

Repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-1001 renumbered from R15-5-1614 (Supp. 94-2). Amended effective April 21, 1995 (Supp. 95-2).

R15-5-1002. Activities in Addition to Providing Lodging

A. If a transient lodging facility is engaged in the business of providing lodging and engages in the business of providing meals, the gross receipts from lodging shall be separately stated and reported from the gross receipts from restaurant activities.

B. Gross receipts from the providing of meals or room service shall be subject to tax under the restaurant classification.

C. Gross receipts from the sale of tangible personal property by transient lodging facilities such as from magazine stands, gift shops, or in-room food or beverage bars shall be subject to tax under the retail classification.

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-1002 renumbered from R15-5-1615 (Supp. 94-2). Amended effective April 21, 1995 (Supp. 95-2).

R15-5-1003. Providing Lodging to Government Agencies

Gross receipts from providing transient lodging to the United States Government, the state or its political subdivisions, or any other government agency or its employees shall be taxable under the transient lodging classification unless otherwise exempt.

Historical Note

Adopted effective April 21, 1995 (Supp. 95-2).

ARTICLE 11. SALES TAX -- PRINTING CLASSIFICATION

R15-5-1101. Repealed

Historical Note

Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-1102. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1103. Examples of printed articles

The printing or other reproduction of books, periodicals, magazines, business or professional stationery, and of any other articles copied or reproduced by printers, engravers, embossers, or copiers, is included under this classification.

R15-5-1104. Definitions

A printer is defined as any person who copies or reproduces an article by any means, process, or method. A printer is subject to the tax, even though conducting the actual printing outside the state, unless the end product is sold outside the state to out-of-state purchasers. Examples include: multigraphing, lithographing, photostating, multilithing, and other similar means of duplicating.

R15-5-1105. Printing facilities located out of state

A printer in this state is subject to the tax on his income from sales within this state even though the printing or reproduction equipment is located in another state.

R15-5-1106. Sale of materials

A. The income from sales made by a job printer of materials on which no printing or other reproduction is done is subject to tax under the retail classification (see Article 18).

B. The sale of articles which do not become a part of the printed or reproduced item is subject to tax under the retail classification (see Article 18) when sold to a user or consumer. Examples of such articles include: electrotypes, color process plates, and wood mounts.

R15-5-1107. Typesetting services

Casting and setting monotype, linotype, and photoplates for others are deemed to be services and are not subject to tax. Income from reproduction proofs furnished to a printer in connection with these services is not taxable. However, sales of reproduction proofs to non-printers are taxable.

Historical Note

Amended effective November 7, 1978 (Supp. 78-6).

R15-5-1108. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1109. Interstate and Foreign Transactions

A. Gross receipts from sales of job printing, engraving, embossing or copying made in interstate or foreign commerce by a vendor within this state are deductible from the tax base if the vendor ships or delivers the job printing to a location outside of Arizona for use outside of Arizona.

B. In meeting the above requirement, if delivery is made by the vendor to a common carrier for transportation to a location outside Arizona, the common carrier is deemed to be the agent of the vendor for purposes of this rule regardless of who is responsible for payment of the freight charges.

C. Suitable records for substantiating out-of-state shipments may include:

1. Internal delivery orders supported by receipts of expenses incurred in delivering the property and signed on the delivery date by the person who delivers the property;
2. Common carrier's receipt or bill of lading;
3. Parcel post receipt;
4. Export declaration;
5. Receipt from a licensed broker; or
6. Proof of export or import signed by a customs officer.

Historical Note

Former Section R15-5-1109 repealed, new Section R15-5-1109 adopted effective March 18, 1981 (Supp. 81-2). Amended effective June 25, 1993 (Supp. 93-2).

R15-5-1110. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1111. Cost of printing

A. A job printer who sublets the printing or other reproduction of an article may not deduct the cost thereof.

B. A job printer may not take a deduction for cost of labor or materials employed.

R15-5-1112. Photography

Photography does not fall within this classification but is included under the retail classification (see Article 18).

ARTICLE 12. REPEALED

R15-5-1201. Repealed

Historical Note
Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-1202. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

ARTICLE 13. SALES TAX -- PUBLISHING CLASSIFICATION

R15-5-1301. Repealed

Historical Note
Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-1302. General

A. The gross income derived from the business of publishing within the state is taxable under this classification. Gross income includes revenue from subscriptions, notices, and local advertising.

B. Subscription income includes all circulation revenue. In determining the taxable base, however, there shall be excluded from such revenue those actual amounts retained by or credited to carriers and other vendors as compensation for delivery or sale of newspapers.

1. Carriers are defined as those persons who deliver newspapers to individual subscribers. Such deliveries are confined to a specific area or route.
2. Other vendors are defined as those persons who deliver newspapers to retailers such as news stands, convenience markets, drug stores and to coin-operated vending machines located in or near commercial establishments such as office buildings, hotels, motels, grocery and department stores.

C. Income of publishers from sales of newspapers, whether directly or through other vendors, to news stands, convenience markets, drug stores or other retailers are taxable under this classification. The sales of newspapers by such retailers to consumers are taxable as retail sales. (See R15-5-1802(C))

Historical Note
Amended effective March 18, 1981 (Supp. 81-2).

R15-5-1303. Definitions

A. A "publisher" is one who manufactures and distributes a publication from a point within this state.

B. The term "publication" includes books, newspapers, magazines, music, periodicals, and any other literary work.

C. Effective 9/12/75, the term "publication" shall specifically exclude books. Sales of books directly to a final consumer, however, are taxable under the retail classification (see Article 18).

R15-5-1304. Printing costs

The cost of printing a publication, including the subletting of printing to another person, is not deductible from the gross income.

R15-5-1305. Out-of-state distribution

Income from publications, other than books, mailed or distributed from a point within this state to a point outside the state is subject to the tax under this classification.

R15-5-1306. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

ARTICLE 14. SALES TAX -- RAILROADS AND AIRCRAFT CLASSIFICATION

R15-5-1401. Repealed

Historical Note
Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-1402. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1403. Repealed

Historical Note
Repealed effective January 16, 1997 (Supp. 97-1).

R15-5-1404. Excess baggage charges

Income from charges for excess baggage shipped from one point to another point in this state is taxable.

R15-5-1405. Demurrage charges

Income from demurrage charges collected on freight shipped from one point to another point in this state and demurrage charges collected on freight shipped from outside the state to a point within the state is taxable.

R15-5-1406. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1407. Repealed

Historical Note
Repealed effective January 16, 1997 (Supp. 97-1).

R15-5-1408. Rental of airplanes

The rental or leasing of aircraft is taxable under the rental of personal property classification (see Article 15).

ARTICLE 15. SALES TAX -- RENTAL OF PERSONAL PROPERTY CLASSIFICATION

R15-5-1501. Repealed

Historical Note
Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-1502. General

A. Gross income derived from the rental of tangible personal property is subject to the tax under this classification. Examples of personal property include: televisions, cars and trucks, lawnmowers, floor polishers, tuxedos, towels and linens.

B. For purposes of this rule, the terms "rental", "renting", or "leasing" are used synonymously.

C. Income from the subleasing of personal property, or any portion thereof, is taxable under this classification. No deduction is allowed for rental payments made to another lessor.

D. The gross income from rental of personal property includes charges made for insurance, maintenance and repairs, title and license fees, and lieu taxes even though such charges may be billed as separate items.

E. When an automobile, truck or other vehicle, required to be registered and licensed by the laws of this state, is rented or leased for a period exceeding one year and the lessee pays the cost of license renewal, the amount so paid shall be included in the gross rental income of the lessor.

Historical Note
Amended subsection (D) and added subsection (E) effective March 18, 1981 (Supp. 81-2).

R15-5-1503. Location of leased equipment

A. Rental location from equipment leased by an Arizona lessor to a lessee who takes possession of the property in Arizona is taxable under this classification.

B. Rental income from equipment leased by an Arizona lessor to a lessee is not taxable when such equipment is shipped or delivered out of state, for use outside of the state.

C. Rental income from leasing of equipment by an out-of-state lessor is taxable when the equipment is shipped, delivered, or otherwise brought into Arizona, for use within the state. For example, when a vehicle is brought into Arizona and registered in Arizona, such vehicle is deemed to be for use in this state. The rental income is, therefore, taxable.

R15-5-1504. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1505. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1506. Rental of property to government agencies

Income from rental of personal property to the United States Government, state of Arizona, and all other governmental subdivisions, is subject to the tax.

R15-5-1507. Rental of property to schools, churches, and other nonprofit organizations

Income from rental of personal property to schools, churches, and other nonprofit organizations is taxable.

R15-5-1508. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1509. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1510. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1511. Repealed

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1512. Lease -- purchase agreements

A. Income from the leasing of personal property with an option to purchase the article is taxable under this classification until such time as the option to purchase is exercised.

B. Payments received after the option has been exercised are taxable under the retail classification (see Article 18).

R15-5-1513. Data processing equipment

A. Income from the leasing or renting of data processing equipment (hardware) and any other item of tangible personal property located within this state is taxable under this classification.

B. Income from services rendered in whole or in part in connection with the use of such hardware is exempt, including income from the multiple use of hardware wherein no single customer has exclusive use of the equipment for a fixed period of time, or where the customer does not exclusively control all manual operations necessary to operate the equipment, or both.

C. Income from professional and technological services such as classroom education, systems support engineering services and computer programs (software), is tax exempt.

D. When rental income is received together with income from exempt services, the charges for each shall be separately stated on billings and invoices or otherwise clearly reflected in the books and records of the taxpayer. If not so separately stated, the gross income from such transaction is taxable.

E. Income from transactions involving services rendered and including tangible property as inconsequential elements thereof is exempt.

Historical Note

Adopted effective November 7, 1978 (Supp. 78-6).

ARTICLE 16. COMMERCIAL LEASE CLASSIFICATION

R15-5-1601. Definitions

The following definitions apply for purposes of the rules in this Article, unless the context requires otherwise or unless otherwise defined.

1. "Agricultural property" means land or structures which are used for the purposes of growing crops or raising animals including agronomy, horticulture, viticulture, or animal husbandry.
2. "Economic unit of agricultural property" means agricultural property which is rented to the same lessee under one lease or rental agreement but may include more than one parcel or location which is functionally integrated.
3. "Real property used for commercial purposes" means land or structures, including parking lots but not including agricultural property or land or structures used for residential purposes.
4. "Rental" means renting or leasing
5. "Unit" means a single real property location rented or leased to a single tenant under one lease or rental agreement.

Historical Note

Repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-1601 renumbered from R15-5-1603 and amended effective April 21, 1995 (Supp. 95-2).

R15-5-1602. Casual Leasing Activity

A. For purposes of taxation under the commercial lease classification, there shall be no general exclusion for a casual rental of real property unless delineated under A.R.S. § 42-1310.09 except as provided in subsection (B) of this rule.

B. For periods ending on or before July 31, 1988, the rental of one unit or real property shall have been deemed to be a casual activity and not subject to transaction privilege tax if:

1. A lessor had income from another source which was unrelated to the income from the rental of real property and such income was of a significant amount so as to indicate that the rental activity was not the sole or main support of the lessor and
2. The scope and degree of the rental activity clearly indicated that the rental activity was an investment activity rather than income from a business.

C. For periods beginning on or after August 1, 1988, gross income from the rental of one or more units of real property used for commercial purposes shall be deemed to be a business activity and shall be taxable under the commercial lease classification.

D. For periods prior to July 17, 1993, gross income from the rental of one economic unit of agricultural property shall not be taxable if the following conditions exist:

1. A lessor had income from another source which was unrelated to the income from the rental of one economic

unit of agricultural property and such income was of a significant amount so as to indicate that the rental activity was not the sole or main support of the lessor and

2. The scope and degree of the rental activity clearly indicated that the rental activity was an investment activity rather than income from a business.

E. For periods from and after July 17, 1993, gross income from the rental of agricultural property shall not be subject to tax if the conditions of A.R.S. § 42-1310.09(C) are met.

F. The following situations are indicative of the application of the general provisions of the commercial lease classification:

1. A three-story office building is lease in its entirety to a large law firm. The building is one unit of property. Prior to August 1, 1988, the lessor of the office building was not considered to be engaged in business under the commercial lease classification if the conditions of subsection (A) existed. Commencing on or after August 1, 1988, the single rental of commercial real property is subject to tax under the commercial lease classification.
2. Individual spaces in a small medical building are rented to three different members of the medical profession on separate leases. The property consists of three units. Regardless of the time period in which the rental occurred, the lessor in this situation has always been engaged in business under the commercial lease classification.
3. A partnership is formed to hold one unit of real property for purposes of leasing. Income received from this activity is taxable since the partnership was formed for business purposes.
4. Two hundred acres of farmland are leased to one tenant. The acreage is one economic unit of agricultural property. The lessor is employed as an engineer and leases the property as an investment. Regardless of the time period in which the lease occurred, the lessor of the property is not engaged in business under the commercial lease classification.
5. Two hundred acres of agricultural property are leased to five unrelated parties on separate leases. The property consists of five economic units of agricultural property. Regardless of the time period in which the leases occurred, the lessor is engaged in business under the commercial lease classification. Five separate lease agreements are not a casual activity and the lessor does not fall within any of the current exemptions under A.R.S. § 42-1310.09(C).

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-1602 renumbered from R15-5-1607 and amended effective April 21, 1995 (Supp. 95-2).

R15-5-1603. Renumbered

Historical Note
Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6). Section R15-5-1603 renumbered to R15-5-1601 effective April 21, 1995 (Supp. 95-2).

R15-5-1604. Gross Income

A. Gross income under the commercial lease classification shall include all amounts paid to or on behalf of the lessor including but not limited to the following items:

1. Rent;
2. Property tax paid by the lessee either as reimbursement to the lessor or paid directly to the county assessor on the lessor's behalf;
3. Insurance paid by the lessee either as reimbursement to the lessor or directly on the lessor's behalf;
4. Common area maintenance charges paid by the lessee;
5. Payments by the lessee for the promotion of the facility or of the lessee;
6. Flat fees paid by the lessee for telephone and reception services, clerical services, library services, reproduction services or facsimile services when such services are contracted for as part of the lease or are obligatory under the lease:
7. Utility connect/disconnect charges;
8. Improvements to the leased property made on behalf of the lessor; or
9. Reimbursement for utility service in excess of the actual amount charged by the utility company.

B. Refundable deposits shall not be subject to tax at the time of receipt if such deposits are separate from gross receipts from commercial leasing and are maintained on the books and records of the lessor as a liability and not as income.

1. Any portion of a refundable deposit which is retained by the lessor as a forfeited deposit shall be included in gross receipts subject to tax.
2. Any portion of a refundable deposit which is not claimed by the tenant at the time the tenant departs shall be presumed to be abandoned property if not claimed within five years from the date of departure pursuant to A.R.S. Title 44, Chapter 3 and shall be reported and delivered as unclaimed property to the department after the five-year period of time has elapsed.
3. If amounts reported as income are claimed as refundable deposits, the burden of proof shall be on the taxpayer to show that the income reported is not gross receipts subject to tax.

C. Nonrefundable charges, such as cleaning charges, shall be included in gross income at the time of receipt.

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2). Adopted effective April 21, 1995 (Supp. 95-2).

R15-5-1605. Rental to Government Agencies

A. Gross receipts from the rental of real property to the United States Government, State of Arizona, or any other government agency shall be taxable under the commercial lease classification unless otherwise exempt.

B. For periods beginning May 24, 1990, and ending on March 31, 1993, the gross receipts from the rental of a single unit of real property to the United States Government shall not be subject to tax if the lessor did not have any other commercial lease income and either of the following conditions existed;

1. The real property was listed on the National Register of Historic Places; or
2. The real property was leased to the United States Postal Service for use as a postal facility.

Historical Head
Amended effective April 21, 1995 (Supp. 95-2).

R15-5-1606. Nonprofit Organizations

A. Nonprofit organizations shall be subject to tax under the commercial lease classification for gross receipts from the rental of real property unless otherwise exempt.

B. Leases of real property to nonprofit organizations shall be subject to tax under the commercial lease classification unless otherwise exempt.

Historical Head
Amended effective April 21, 1995 (Supp. 95-2).

R15-5-1607. Renumbered

Historical Note
Amended effective November 1, 1976 (Supp. 76-5). Amended effective November 7, 1978 (Supp. 78-6). Section R15-5-1607 renumbered to R15-5-1602 effective April 21, 1995 (Supp. 95-2).

R15-5-1608. Commercial property -- storage facilities
Income from the rental of storage facilities is taxable, provided the lessee retains the right of direct access to the stored goods. Conversely, the storage of property by a warehouse, when the warehouse proprietor maintains full control over the specific location of the stored goods within the building, is not taxable. Such storage is deemed to be a service rather than rental of real property.

R15-5-1609. Commercial property -- licensee agreements
When a department store enters into an agreement with a licensee to provide space within the store which does not give the licensee exclusive right to any specific area within the store, the income from such an agreement is not subject to tax. The transaction is deemed to be a licensee agreement rather than the subleasing of real property.

R15-5-1610. Rental Occupancy Tax
A. Income from leases entered into prior to December 1, 1967, and extending beyond January 1, 1975, shall be subject to tax under the Rental Occupancy Tax Act until the lease expires, is renewed, or renegotiated. The gross receipts or gross income from leasing after that time shall be taxable under the commercial lease classification.
B. Leases pertaining to the renting of office buildings, parking lots, and other property which had been subject to the transaction privilege tax prior to March 22, 1968, shall not be included under the Rental Occupancy Tax Act, but shall be subject to tax under the commercial lease classification.

Historical Note
Amended effective April 21, 1995 (Supp. 95-2).

R15-5-1611. Repealed

Historical Note
Repealed effective January 16, 1997 (Supp. 97-1).

R15-5-1612. Repealed

Historical Note
Repealed effective January 16, 1997 (Supp. 97-1).

R15-5-1613. Repealed

Historical Note
Amended effective November 1, 1976 (Supp. 76-5). Repealed effective April 21, 1995 (Supp. 95-2).

R15-5-1614. Renumbered

Historical Note
Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6). Renumbered to R15-5-1001 (Supp. 94-2).

R15-5-1615. Renumbered

Historical Note
Amended effective November 7, 1978 (Supp. 78-6). Renumbered to R15-5-1002 (Supp. 94-2).

R15-5-1616. Repealed

Historical Note
Repealed effective April 21, 1995 (Supp. 95-2).

R15-5-1617. Repealed

Historical Note
Repealed effective April 21, 1995 (Supp. 95-2).

ARTICLE 17. RESTAURANT CLASSIFICATION

R15-5-1701. Repealed

Historical Note
Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-1702. Repealed

Historical Note
Amended effective November 7, 1978 (Supp. 78-6). Repealed April 21, 1995 (Supp. 95-2).

R15-5-1703. Repealed

Historical Note
Repealed effective March 18, 1981 (Supp. 81-2).

R15-5-1704. Providing Food or Drink to Government Agencies
A restaurant's gross proceeds of sales or gross income from sales of food or drink to the United States Government, the state or its political subdivisions, or any other government agency, or its employees is included in the tax base under the restaurant classification unless exempt as a sale to a qualifying hospital under A.R.S. § 42-1310.14(B)(7) or as a sale *for consumption within the premises of a prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff* under A.R.S. § 42-1310.14(B)(9).

Historical Note
Amended effective December 16, 1997 (Supp. 97-4).

R15-5-1705. Amusement Devices
A restaurant's gross proceeds of sales or gross income from the operation of amusement devices is included in the tax base under the amusement classification (see Article 4).

Historical Note
Amended effective December 16, 1997 (Supp. 97-4).

R15-5-1706. Cover Charges
A restaurant's gross proceeds of sales or gross income from a cover charge or other minimum charge is included in the tax base under the restaurant classification.

Historical Note
Amended effective December 16, 1997 (Supp. 97-4).

R15-5-1707. Repealed

Historical Note
Repealed effective January 16, 1997 (Supp. 97-1).

R15-5-1708. Gratuities (Tips)
A. A restaurant's gross receipts from gratuities that are separately stated on the check or bill are not included in the restaurant's tax base if:
1. The exact amount charged on a check for gratuities is segregated on the seller's records for the account of the employees actually providing the services; and
2. The amounts so segregated are distributed directly to the employees providing the services for which the charges were made.

B. If a restaurant cannot specifically segregate the charges for gratuities or if any portion of the amounts charged for gratuities is not distributed to the employees involved, the total gross receipts from the gratuities are included in the tax base under the restaurant classification.

Historical Note
Amended effective December 16, 1997 (Supp. 97-4).

R15-5-1709. Coupon Redemption
A restaurant that accepts coupons is subject to transaction privilege tax on the full sales price of the food or beverage before the coupon value is deducted if the restaurant receives advertising, services, or products in exchange for providing the discounts.

Historical Note
Adopted effective November 7, 1978 (Supp. 78-6).
Amended effective December 16, 1997 (Supp. 97-4).

ARTICLE 18. SALES TAX -- RETAIL CLASSIFICATION

R15-5-1801. Repealed

Historical Note
Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-1802. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1803. Renumbered

Historical Note
Renumbered to R15-5-181 effective August 9, 1993 (Supp. 93-3).

R15-5-1804. Renumbered

Historical Note
Renumbered to R15-5-182 effective August 9, 1993 (Supp. 93-3).

R15-5-1805. Renumbered

Historical Note
Renumbered to R15-5-104 effective August 9, 1993 (Supp. 93-3).

R15-5-1806. Repealed

Historical Note
Amended effective November 7, 1978 (Supp. 78-6). Repealed effective August 9, 1993 (Supp. 93-3).

R15-5-1807. Repealed

Historical Note
Repealed effective August 9, 1993 (Supp. 93-3).

R15-5-1808. Renumbered

Historical Note
Renumbered to R15-5-111 effective August 9, 1993 (Supp. 93-3).

R15-5-1809. Renumbered

Historical Note
Renumbered to R15-5-110 effective August 9, 1993 (Supp. 93-3).

R15-5-1810. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1811. Renumbered

Historical Note
Amended effective November 7, 1978 (Supp. 78-6). Renumbered to R15-5-101 effective August 9, 1993 (Supp. 93-3).

R15-5-1812. Repealed

Historical Note
Repealed effective August 9, 1993 (Supp. 93-3).

Editor's Note: The information about casual sales that formerly was contained in R15-5-1812, and which is referenced in subsection R15-5-151(C)(1), now appears in R15-5-2001.

R15-5-1813. Renumbered

Historical Note
Renumbered to R15-5-2011 effective October 14, 1993 (Supp. 93-4).

R15-5-1814. Renumbered

Historical Note
Amended subsections (A) and (B) effective March 18, 1981 (Supp. 81-2). Renumbered to R15-5-170 effective August 9, 1993 (Supp. 93-3).

R15-5-1815. Renumbered

Historical Note
Renumbered to R15-5-105 effective August 9, 1993 (Supp. 93-3).

R15-5-1816. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1817. Renumbered

Historical Note
Renumbered to R15-5-103 effective August 9, 1993 (Supp. 93-3).

R15-5-1818. Renumbered

Historical Note
Renumbered to R15-5-132 effective August 9, 1993 (Supp. 93-3).

R15-5-1819. Renumbered

Historical Note
Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6). Amended subsection (B), paragraph (1) effective March 18, 1981 (Supp. 81-2). Renumbered to R15-5-156 effective August 9, 1993 (Supp. 93-3).

R15-5-1820. Renumbered

Historical Note
Renumbered to R15-5-133 effective August 9, 1993 (Supp. 93-3).

R15-5-1821. Renumbered

Historical Note
Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6). Amended subsection (B) effective March 18, 1981 (Supp. 81-2). Renumbered to R15-5-183 effective August 9, 1993 (Supp. 93-3).

R15-5-1822. Renumbered

Historical Note
Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6). Amended paragraphs (9) and (10) effective March 18, 1981 (Supp. 81-2). Renumbered to R15-5-120 effective August 9, 1993 (Supp. 93-3).

R15-5-1823. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1824. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1825. Renumbered

Historical Note
Renumbered to R15-5-180 effective August 9, 1993 (Supp. 93-3).

R15-5-1826. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1827. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1828. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1829. Renumbered

Historical Note
Renumbered to R15-5-134 effective August 9, 1993 (Supp. 93-3).

R15-5-1830. Renumbered

Historical Note
Renumbered to R15-5-121 effective August 9, 1993 (Supp. 93-3).

R15-5-1831. Repealed

Historical Note
Repealed effective August 9, 1993 (Supp. 93-3).

R15-5-1832. Repealed

Historical Note
Former Section R15-5-1832 repealed, new Section R15-5-1832 adopted effective September 3, 1978 (Supp. 78-6). Repealed effective August 9, 1993 (Supp. 93-3).

R15-5-1833. Renumbered

Historical Note
Former Section R15-5-1833 repealed, new Section R15-5-1833 adopted effective March 18, 1981 (Supp. 81-2). Renumbered to R15-5-136 effective August 9, 1993 (Supp. 93-3).

R15-5-1834. Renumbered

Historical Note
Renumbered to R15-5-112 effective August 9, 1993 (Supp. 93-3).

R15-5-1835. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1836. Renumbered

Historical Note
Renumbered to R15-5-150 effective August 9, 1993 (Supp. 93-3).

R15-5-1837. Repealed

Historical Note
Repealed effective April 15, 1993 (Supp. 93-2).

R15-5-1838. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1839. Renumbered

Historical Note
Renumbered to R15-5-129 effective August 9, 1993 (Supp. 93-3).

R15-5-1840. Renumbered

Historical Note
Renumbered to R15-5-122 effective August 9, 1993 (Supp. 93-3).

R15-5-1841. Repealed

Historical Note
Repealed effective August 9, 1993 (Supp. 93-3).

R15-5-1842. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1843. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1844. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1845. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1846. Renumbered

Historical Note
Renumbered to R15-5-3004 effective July 23, 1985 (Supp. 85-4).

R15-5-1847. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1848. Renumbered

Historical Note
Renumbered to R15-5-126 effective August 9, 1993 (Supp. 93-3).

R15-5-1849. Renumbered

Historical Note
Renumbered to R15-5-123 effective August 9, 1993 (Supp. 93-3).

R15-5-1850. Renumbered

Historical Note
Former Section R15-5-1850 repealed, new Section R15-5-1850 adopted effective June 18, 1987 (Supp. 87-2). Section R15-5-1850 renumbered to R15-5-2010 effective October 14, 1993 (Supp. 93-4).

R15-5-1851. Repealed

Historical Note
Repealed effective August 9, 1993 (Supp. 93-3).

R15-5-1852. Repealed

Historical Note
Repealed effective August 9, 1993 (Supp. 93-3).

R15-5-1853. Renumbered

Historical Note
Adopted effective November 7, 1978 (Supp. 78-6). Amended effective June 16, 1987 (Supp. 87-2). Renumbered to R15-5-154 effective August 9, 1993 (Supp. 93-3).

ARTICLE 18.1. SALES OF FOOD

R15-5-1860. Definitions

For the purpose of these rules, unless the context requires otherwise, the following definitions will apply:

1. "Accessory food items" means coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments and spices, and other non-staple foods.
2. "Attendant" means a person, generally the employee of the retailer, who waits on the customers, or tends to their needs.
3. "Automatic retailer" means a coin operated mechanical device or system which sells tangible personal property. Such device or system must itself vend or sell the items, i.e., a device or system which delivers the subject of the sale, or by automatic action physically delivers the thing sold. Vending machines are considered automatic retailers.
4. "Caterer" means a person engaged in the business of serving meals, food and drinks on the premises used by his customer, but does not include employees hired by the hour of day.
5. "Delicatessen" means a business which sells specialty food items, such as prepared cold meats, perishable food and grocery items kept under refrigeration.
6. "Facilities for the consumption of food" means appropriate furniture, tableware, or parking areas for sitting both in or on the premises of the business, either in or out of a motor vehicle.
7. "Food"
   a. Under A.R.S. § 42-1387, the Department is required to promulgate rules defining food as those items that may be purchased from an eligible grocery business with food coupons, but in no event may such definition of food include food for consumption on the premises, alcoholic beverages or tobacco. Even though alcoholic beverages and food for consumption on the premises may be intended for human consumption, such items are not considered food by the statutory provisions. In these rules, items that are considered food by the Statutes, and therefore tax exempt if sold by a qualified retailer, shall be referred to as "tax exempt foods". Other items that may be intended for human consumption but are excluded from the definition of food by the Statute, and are therefore subject to the Sales Tax, shall be referred to herein as "taxable foods".
   b. "Food" means: Items intended for human consumption. Food is deemed to be intended for human consumption when its intended or ordinary use is as a food for human consumption or is an ingredient used in preparing food for human consumption. For example, even though animal food may be used by some humans, its ordinary or intended use is not for human consumption. Also, even though vitamins and other medication may be ingested, its intended or ordinary use is as a health aid or therapeutic agent or a deficiency corrector and is not intended for use as food. Following is a numeration of items which the Department does not consider food for human consumption:
      i. Pet food and supplies
      ii. Cosmetics and grooming items
      iii. Tobacco products
      iv. Soaps and paper products and household supplies
      v. Dietary supplements such as vitamins or protein supplements
      vi. Medicines
      vii. Fertilizer
8. "Food for consumption on the premises"
   a. "Food for consumption on the premises" means the following:
      i. Hot prepared food, including products, items or ingredients of food which are prepared and sold or are intended to be sold in a heated condition. This also includes a combination of hot and cold food items or ingredients if a single price is charged by the retailer.
      ii. Hot or cold sandwiches including frozen sandwiches.
      iii. Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters and within parking areas (for in-car consumption).
      iv. Food served with trays, glasses, dishes or other tableware. Food which is generally selected by the customer from available displays and then taken by the customer to a checkout stand for payment is not considered to be served by the retailer.
      v. Beverages sold in cups, glasses or open containers. Beverages shall include items such as milk shakes and ice cream floats.
      vi. Food sold by caterers.
      vii. Food sold within the premises of theaters, exhibitions, fairs, amusement parks, bowling alleys, athletic events, and other shows or contests and any businesses which charge admission, entrance or cover fees for exhibition, amusement, entertainment or instruction. While food for consumption on the premises includes any food sold within the premises of certain businesses, including businesses that charge admission, entrance or cover fees for exhibition, amusement, entertainment or instruction, food for consumption on premises does not include sales of tax exempt food by a qualified retailer within the premises of a full time educational institution that charges tuition for a full course of studies.
   b. Any item enumerated in subparagraph (a) which is sold on a take-out or to-go basis is still considered to be food for consumption on the premises and therefore taxable.
9. "Food intended for home consumption" means food, other than food for consumption on the premises, which is usually intended to be consumed at home. Unless the

taxpayer can establish to the contrary, food delivered by a retailer to an office or other business establishment shall not be considered food intended for home consumption.

10. "Home" means a natural person's usual or habitual dwelling place, including rest homes, nursing homes, jails and other such institutions.
11. "Premises" means the total space and facilities, including buildings, grounds and parking lot that are made available for use by the retailer for the purpose of consuming food sold by such retailer.
12. "Qualified retailer"
    a. A qualified retailer or qualified retail business is one that may be eligible to sell tax exempt food without including the sale of tax exempt food items in its taxable base. A retailer other than a qualified retailer must pay a tax measured by the sale of otherwise exempt food even though the sale of such items would be exempt if sold by a qualified retailer.
    b. Qualified retailers are:
        i. An eligible grocery business, which includes retailers who are eligible to participate in the United States Department of Agriculture Food Stamp Program, whether such retailer actually participates in the food stamp program. If a retailer is eligible to participate in the food stamp program, but does not participate in such program, such retailer may only be an eligible grocery business if the retailer first makes application to the Department to sell food tax exempt. Examples of retailers that might be considered eligible grocery businesses include:
            (1) Grocery stores;
            (2) Convenience stores;
            (3) Butcher shops;
            (4) Bakeries;
            (5) Dairy stores;
            (6) Cheese stores;
            (7) Farmer's markets.
        ii. Retailers whose primary business is not the sale of food, but who sell food in a manner similar to grocery stores. This category includes stores such as department stores, drug stores, and gas stations.
        iii. Retailers who sell food and who do not provide any facilities for consumption of food on the premises. This category may include certain health food stores, and certain outlets retailing soda and other similar beverages in bottles or cans, but not cups.
        iv. Delicatessen business, if such retailer conducts his business so that the sale of tax exempt foods and other taxable items may be separately accounted for, through, for example, the use of two (2) cash registers, or a cash register with at least two (2) tax computing keys which are used to record taxable and tax exempt sales.
        v. A retailer who is a street or sidewalk vendor who uses a pushcart, mobile facility, motor vehicle, or other such conveyance. Such retailers include:
            (1) Snackmobile;
            (2) Chuck wagon;
            (3) Mobile hot dog stands.
        vi. Vending machines and other automatic retailers.
13. "Staple food" means those food items intended for home preparation and consumption, which includes meat, poultry, fish, bread and bread stuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products.
14. "Taxable foods" are items which may be intended for human consumption, but are still subject to the Sales Tax when sold. Examples of taxable foods would be alcoholic beverages, and food for consumption on the premises.
15. Tax-exempt foods
    a. "Tax exempt foods" are generally those items of food intended for home consumption which, if purchased from an eligible grocery business, would be eligible as of January 1, 1979, to be purchased with food coupons issued by the United States Department of Agriculture.
    b. Tax-exempt food shall also include any new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1, 1979.
    c. The following are examples of items which the Department will consider as tax exempt food:
        bread and flour products
        vegetables and vegetable products
        candy and confectionery
        sugar, sugar products and substitutes
        cereal and cereal products
        butter, oleomargarine, shortening and cooking oils
        cocoa and cocoa products
        coffee and coffee substitutes
        milk and milk products
        eggs and egg products
        tea
        meat and meat products
        spices, condiments, extracts and food colorings
        fish and fish products
        frozen foods
        soft drinks and soda (including bottles on which a deposit is required to be paid)
        fruit and fruit products
        packaged ice cream products
        dietary substitutes
        ice cubes and bottled water including carbonated and mineral water
        purchases of seed and plants for use in gardens to produce food items for personal consumption
16. "Two tax computing keys" shall mean the mechanical or electronic function in a cash register which can separately record and accumulate taxable and nontaxable items without having the items presorted.

Historical Note

Adopted as an emergency effective June 30, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Former emergency adoption now amended and adopted effective October 15, 1980 (Supp. 80-5).

R15-5-1861. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1862. Restaurant food sales

A. Restaurants are generally not qualified retailers, and therefore cannot sell food tax free, but are taxable upon all of their gross income or gross proceeds of sale.

B. If a qualified retailer also operates a restaurant, the gross income or gross receipts of a sale from the two (2) activities must be kept separate. The gross receipts or gross income from the operation of the restaurant shall always be taxable, as will the income from all sales of taxable food and nonfood items. Except for items which may be exempt under some other provision, only tax-exempt foods sold by a qualified retailer not in connection with its restaurant operation shall be exempt.

C. To the extent that a delicatessen may sell taxable food, such as hot or cold sandwiches, such delicatessen will be required to report under this classification. Since a delicatessen business may constitute a qualified retailer, such business may still be eligible to sell tax exempt food, if such sales are separately accounted for.

Historical Note
Adopted as an emergency effective June 30, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Former emergency adoption now amended and adopted effective October 15, 1980 (Supp. 80-5).

R15-5-1863. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1864. Repealed

Historical Note
Repealed effective October 17, 1986 (Supp. 86-5).

R15-5-1864.01. Repealed

Historical Note
Repealed effective October 17, 1986 (Supp. 86-5).

R15-5-1864.02. Repealed

Historical Note
Repealed effective October 17, 1986 (Supp. 86-5).

R15-5-1864.03. Repealed

Historical Note
Repealed effective October 17, 1986 (Supp. 86-5).

R15-5-1864.04. Repealed

Historical Note
Repealed effective October 17, 1986 (Supp. 86-5).

R15-5-1865. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1866. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1867. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

ARTICLE 19. REPEALED

R15-5-1901. Repealed

Historical Note
Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-1902. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1903. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1904. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1905. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-1906. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

ARTICLE 20. GENERAL

R15-5-2001. Definitions

The following definitions apply for the purposes of the rules in this Chapter, unless the context requires otherwise or unless otherwise defined. An individual rule may contain definitions which are specific to the context of that rule.

1. "Casual sale" means an occasional transaction of an isolated nature made by a person who is not engaged in the business of selling, within or without the state, the same type or character of property as that which was sold.
2. "Department" means the Arizona Department of Revenue.
3. "Gross income" means all receipts of a trade or business from sales or services. It includes the total consideration received or constructively received. The value of all services which are part of the sale is considered part of the gross income, unless statutorily excluded.
4. "Gross receipts" means gross receipts as defined in A.R.S. § 42-1301.
5. "Real property" means land and anything permanently affixed to land.
6. "Taxpayer" means any person required by law to file returns or to pay transaction privilege tax, use tax, rental occupancy tax, or excise taxes to the Department.
7. "Vendor" means any person engaged in a business which is subject to Arizona tax.

Historical Note
Repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-2001 renumbered from R15-5-202 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2002. Liability for Transaction Privilege Tax

The transaction privilege tax is imposed directly on the person engaging in a taxable business within Arizona. The vendor shall be liable for the tax, regardless of whether or not the vendor passes on the economic burden of the tax to the customer.

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-2002 renumbered from R15-5-204 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2003. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-2004. Multi-location and Multi-business Taxpayers

A. A taxpayer with multiple licenses for separate businesses shall maintain separate records for each licensed business.

B. A tax is levied upon the privilege of engaging in specified businesses within Arizona. Class codes for reporting gross receipts subject to tax have been determined by the Department based on statutory provisions. Each business classification is independent of the others even when transacted under one license. A person who engages in more than one type of business under each license shall maintain books and records so that the gross proceeds of sales or gross income of each taxable business classification is shown separately.

C. Failure to maintain appropriate books and records shall result in the imposition of the tax at the highest tax rate on gross proceeds of sales or gross income applicable to a classification under which the taxpayer is doing business.

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-2004 renumbered from R15-5-2215 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2005. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-2006. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-2007. Credit for Accounting and Reporting Expenses

A. For purposes of this rule, the following definitions apply:
1. "Reporting period" means a calendar month unless another period is authorized pursuant to A.R.S. § 42-1322.
2. "Statutory delinquency date" means the date by which a payment of tax is considered delinquent pursuant to A.R.S. § 42-1322.
3. "Tax return" means the Transaction Privilege, Use, and Severance Tax Return (TPT-1).
4. "Taxable business" means a business which is subject to either transaction privilege or severance tax.
5. "Taxpayer" means taxpayer as defined in A.R.S. § 42-1322.04(C), including an entity which is exempt from state income tax. The following are considered a single taxpayer:
   a. Members of an Arizona affiliated group filing a consolidated corporate income tax return under A.R.S. § 43-947;
   b. Corporations in a unitary business filing a combined corporate income tax return under A.A.C. R15-2-1131(E);
   c. Married taxpayers operating separate sole proprietorships and filing a joint income tax return under A.A.C. R15-2-1131(E); or
   d. Partnerships, S Corporations, trusts, or estates conducting multiple businesses, filing a single income tax return.

B. A taxpayer shall compute the credit, using the full amount of tax as required to be reported on the tax return, including any excess tax collected. The Department shall not allow a credit against taxes other than the state transaction privilege tax and the severance tax.

C. Except as provided in subsection (D), the Department shall not allow a credit if the taxpayer fails to pay the tax due before the statutory delinquency date. Failure to pay the tax due includes the following circumstances:
1. The taxpayer makes an underpayment of tax due, including any estimated tax due, or,
2. The taxpayer's check is dishonored.

D. In the case of taxpayer computational error, the Department shall allow the credit based on the amounts originally filed, if the computational error resulted in the overpayment or underpayment of the tax actually due:
1. In the case of an overpayment, the Department shall allow the credit on the actual amount of tax due for the reporting period.
2. In the case of an underpayment, the Department shall allow the credit on the amount of the tax paid prior to the statutory delinquency date.

E. To receive the credit for each reporting period, the taxpayer shall claim the credit on the tax return. If the taxpayer understates the amount of the credit on the tax return, the Department shall allow the amount of credit which the taxpayer has claimed. The taxpayer may file an amended return to claim any unclaimed portion of the credit if the taxpayer timely paid the tax upon which the credit is based. If the taxpayer overstates the amount of the credit, the Department shall allow the amount of credit actually permitted for the reporting period.

F. A taxpayer is entitled to 1 credit, regardless of the number of licenses, businesses, or locations the taxpayer may have. Taxpayers with multiple licenses for separate businesses or separate locations shall elect the manner in which to allocate the credit among their licenses within the $10,000 annual limitation. The election shall be made on a form 51-T. The taxpayer shall file the election on or before January 15 of the 1st year for which an election is being made or within 30 days prior to beginning operations if the taxpayer is a new business entity. The taxpayer is required to file an election 1 time; however, a new election may be filed under the following circumstances:
1. If a taxpayer does not claim the entire $10,000 credit during the calendar year, the taxpayer may amend the election at the end of the calendar year to reallocate the unclaimed portion of the credit for that particular year. This amended election shall be filed on or before January 31 of the following year. To claim the reallocated credit, the taxpayer shall file an amended tax return for each reporting period in which a sufficient tax was due and timely paid. For example: an individual owns 3 separate businesses with different transaction privilege tax licenses. At the beginning of the year, the individual allocates the $10,000 credit as follows: $3,000 to Company A; $2,000 to Company B; and $5,000 to Company C. At the end of the year, Companies A and B have claimed the credit up to their allocated amounts. However, Company C has only claimed $1,000 of its allocated credit. Company A timely paid a sufficient amount of tax during the months of August and September to qualify for an additional $4,000 credit. The individual may amend the election to reallocate the unclaimed credit to Company A. To claim the $4,000 credit, the individual must file an amended tax return for Company A for the months of August and September.
2. If a taxpayer acquires, sells, or terminates a taxable business during the calendar year, the taxpayer may amend the election at that time to reallocate the credit. The taxpayer shall only reallocate the portion of the credit which has not been claimed by the date on which the taxpayer acquires, sells, or terminates the business. The taxpayer

shall ensure that the election relates to the acquired, sold, or terminated business and is made on a prospective basis only. The taxpayer shall notify the Department of the reallocation 30 days prior to the due date of the tax return for the reporting period to which the reallocation applies. For example: Corporation A is the common parent of Corporations B and C and elects to file a consolidated corporate state income tax return. Each of the 3 corporations conducts a taxable business activity. Since the 3 corporations file state income tax as 1 entity, Corporation A is required to allocate the $10,000 credit among the 3 corporations. At the beginning of the year, Corporation A elects to allocate the entire $10,000 credit to Corporation B. On July 1, Corporation A acquires Corporation D which also conducts a taxable business activity. Corporation A may amend its election at this time to take into account Corporation D. Corporation A may reallocate the portion of the credit not already claimed by Corporation B to Corporation D.

G. Where a taxpayer is allocating the $10,000 credit, the following rules apply:

1. The Department shall allow a unitary business, filing a combined corporate state income tax return, or an Arizona affiliated group, filing a consolidated corporate state income tax return, 1 $10,000 credit. The unitary business or affiliated group may allocate the credit among its members. If the unitary business or affiliated group fails to allocate the $10,000 credit, the Department shall allocate the credit to the corporation in whose name the unitary business or affiliated group files its state income tax return regardless of whether the corporation conducts a taxable business.
   a. If a corporation joins an Arizona affiliated group or unitary business during the calendar year, the Department shall classify the corporation as a separate taxpayer for the period before it joins the affiliated group or unitary business. The Department shall classify the corporation as the same taxpayer, an affiliated group, or unitary business for the period after it joins the affiliated group or unitary business. An affiliated group or unitary business may allocate the $10,000 credit, even if a member corporation claimed the credit before it joined the affiliated group or unitary business.
   b. If a corporation leaves an affiliated group or unitary business during the calendar year, the Department shall classify the corporation as the same taxpayer, an affiliated group, or unitary business for the period before it leaves the affiliated group or unitary business. The Department shall not classify the corporation as the same taxpayer for the period after it leaves the affiliated group or unitary business. The corporation, as a separate taxpayer or part of a separate taxpayer, may allocate the $10,000 credit, even if the corporation claimed the credit before it left an affiliated group or unitary business.
2. If a partnership, S corporation, trust, or estate conducts multiple taxable businesses, the Department shall allow the partnership, S corporation, trust, or estate 1 $10,000 credit. The partnership, S corporation, trust, or estate may allocate the credit among its businesses. The credit shall not be allocated to the partners of a partnership, shareholders of an S corporation, or beneficiaries of a trust or estate.
3. In cases where the taxpayers are married and each spouse conducts a taxable business, the Department shall allow 1 $10,000 credit per income tax return. If the married taxpayers file separate individual income tax returns, the Department shall allow each spouse 1 $10,000 credit. If the married taxpayers file a joint income tax return, the Department shall allow 1 $10,000 credit for the couple.

Historical Note
Renumbered from R15-5-3025 (Supp. 94-2). Amended effective August 13, 1996 (Supp. 96-3).

R15-5-2008. Reserved

R15-5-2009. Reserved

R15-5-2010. Transactions Between Affiliated Persons

A. For purposes of this rule, the following definitions apply:
1. "Actual ownership" means direct ownership and control but does not include ownership by or through affiliated persons.
2. "Affiliated persons" means members of the individual's family or persons who have ownership or control of a business entity.
3. "Constructive purchase price" means the fair market value or, if the fair market value cannot be determined, the value established by expert appraisal that takes into consideration all factors relevant to the transaction.
4. "Control of a business entity" means direct or indirect ownership or control of more than 50 percent of the business entity. The following guidelines, as to indirect ownership, shall apply for purposes of determining control of a business entity.
   a. A corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.
   b. An individual shall be considered as owning directly or indirectly that portion which is owned by or for members of the individual's family.
   c. The ownership of stock by a corporation, partnership, estate, or trust shall be considered actual ownership to its shareholders, partners, or beneficiaries for purposes of making another individual a constructive owner.
   d. Ownership based on a family relationship shall not be treated as actual ownership by the related party for the purpose of making another individual a constructive owner.
5. "Fair market value" means the gross receipts that the transaction would have brought in the open market at a time and location similar to that of the affiliated party transaction and between a willing purchaser and a willing seller, who are not affiliated and have reasonable knowledge of the relevant facts.
6. "Members of the individual's family" means the relationship of spouse, brothers, and sisters, whether by whole or half blood and including adopted persons, ancestors, and lineal descendants.

B. The tax shall be computed upon the constructive purchase price when:
1. The transaction is between affiliated persons, and
2. The facts and circumstances indicate that the reported gross receipts from the transaction are not indicative of the fair market value of the transaction.

Historical Note
Renumbered from Section R15-5-1850 and amended effective October 14, 1993 (Supp. 93-4). Corrected typographical error to reflect what was filed with the Office of Secretary of State October 14, 1993; changed "owner" to

"owned" in subsection (A)(4)(a) (Supp. 97-1).

R15-5-2011. Bad Debts

A. The deduction of a bad debt shall be allowed from gross receipts if the following conditions apply:
1. The gross receipts from the transaction on which the bad debt deduction is being taken have been reported as taxable;
2. The debt arose from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a fixed or determinable sum of money; and
3. All or part of the debt is worthless.

B. A debt shall be considered worthless if:
1. The surrounding circumstances indicate that the debt is uncollectible; and
2. Legal action to enforce payment has not or, in all probability, would not result in the satisfaction of the debt.

C. The bad debt deduction shall be computed by subtracting the amounts received on the debt from the amount originally reported as taxable. The portion of the amounts received on the debt representing carrying charges, interest, and repossession expenses, which have not been reported as taxable, shall not be allowed as a bad debt deduction.

D. A bad debt deduction shall be taken in the month in which the conditions of subsection (A) apply.

E. A bad debt deduction shall be allowed, pursuant to the provisions in this rule, on conditional or installment sales if:
1. The tax liability is paid on the full sales price of the tangible personal property at the time of the sale; or
2. A contract or other financial obligation is sold to a third party as a sale with recourse and principal payments are made by the vendor to the third party, pursuant to the default of the original payor. Such principal payments may be taken as a bad debt deduction if the tax was paid by the vendor on the original sale of the tangible personal property or on the subsequent sale of the financing contract.
3. For purposes of the bad debt deduction in situations of default on conditional or installment sales, a "sale with recourse" means that a vendor sells a contract or other financial obligation to a third party but retains liability for payment upon default of the original payor.

F. Any recovery of a bad debt subsequent to a bad debt deduction shall be reported as taxable gross receipts when received.

Historical Note
Renumbered from Section R15-5-1813 and amended effective October 14, 1993 (Supp. 93-4). Corrected misspelling in subsection (E)(3) from "retails" to "retains" (Supp. 94-2).

ARTICLE 21. UTILITIES CLASSIFICATION

R15-5-2101. Repealed

Historical Note
Repealed effective August 13, 1987 (Supp. 87-3).

R15-5-2102. Renumbered

Historical Note
Renumbered to R15-5-3024 (Supp. 86-6).

R15-5-2103. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-2104. Interstate and Foreign Sales

A person engaged in business under the utilities classification may deduct from the tax base gross receipts from sales of electricity, gas, or water, delivered through transmission lines or pipelines to a point in another state or country, from a point in this state and used outside this state.

Historical Note
Amended effective October 17, 1997 (Supp. 97-4).

R15-5-2105. Locally Delivered Utilities

A person engaged in business under the utilities classification is subject to tax on the gross receipts from sales of electricity, gas, or water, produced outside this state that is delivered through transmission lines or pipelines to a point in this state, for use in this state unless an exemption applies.

Historical Note
Amended effective October 17, 1997 (Supp. 97-4).

R15-5-2106. Compressed and Bottled Liquids

The gross receipts from sales of bottled gases and bottled water are subject to tax under the retail classification unless otherwise exempt.

Historical Note
Amended effective March 18, 1981 (Supp. 81-2).
Amended effective October 17, 1997 (Supp. 97-4).

R15-5-2107. Sales to Irrigation Districts

A person engaged in business under the utilities classification is subject to tax on the gross receipts from producing and furnishing or furnishing electricity or gas to an irrigation district for the purpose of producing water for irrigation of farm lands or of lands subdivided for residential purposes which are entitled to irrigation water unless an exemption applies.

Historical Note
Amended effective October 17, 1997 (Supp. 97-4).

R15-5-2108. Repealed

Historical Note
Repealed effective October 17, 1997 (Supp. 97-4).

R15-5-2109. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-2210. Security Deposits

Gross receipts from customer deposits that are held as security for payment of utility billings are not subject to tax until recognized as income. A deposit that is not applied to a customer's bill or refunded to a customer when utility services are discontinued shall be presumed to be abandoned property if the customer does not claim it within the period established under A.R.S. Title 44, Chapter 3. Customer deposits that are presumed to be abandoned property under A.R.S. Title 44, Chapter 3, shall be reported and delivered to the Department as unclaimed property. Amounts delivered to the Department as unclaimed property are not included in the tax base. For example:

1. A utility company requires a new customer to deposit $150 before it provides utility service. The customer moves and notifies the utility company to discontinue service. The customer's final bill is $130. The utility applies the deposit to the final bill and refunds $20 to the customer. The amount applied to the utility bill is recognized as income and subject to tax. The amount refunded to the customer is not recognized by the utility as income and is not subject to tax.
2. A utility company requires a new customer to deposit $150 before it provides utility service. The customer notifies the utility company to discontinue service. The customer's final bill is $130. The utility applies the deposit

to the final bill. The customer does not provide a forwarding address to the utility. Therefore, the utility company is not able to refund the remaining $20 to the customer. The amount applied to the utility bill is recognized as income and subject to tax. The remaining $20 is presumed to be abandoned property if not claimed under A.R.S. Title 44, Chapter 3. The amount presumed to be abandoned property shall be reported and delivered to the Department as unclaimed property under A.R.S. Title 44, Chapter 3. The amount delivered to the Department as unclaimed property is not recognized as income by the utility and is not subject to tax.

Historical Note
Amended effective October 17, 1997 (Supp. 97-4).

ARTICLE 22. SALES TAX - ADMINISTRATION

R15-5-2201. Display of License

A. A person maintaining a public place of business in Arizona shall display the transaction privilege tax license in a location conspicuous to the public.

B. If a person maintains more than one place of business in Arizona, a transaction privilege tax license shall be displayed at each location.

C. For lessors engaged in the business of commercial leasing, a transaction privilege tax license shall be displayed in each location from which the lessor engages in business transactions.

Historical Note
Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6). Amended effective October 15, 1980 (Supp. 80-5). Repealed effective February 22, 1989 (Supp. 89-1). Section R15-5-2201 renumbered from R15-5-2203 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2202. Change in Ownership

A. A transaction privilege tax or use tax license is issued to a specific person. The license shall not be transferred to the new owner when selling a business. The new owner shall apply to the state for a new license before engaging in business transactions.

B. Court-appointed trustees, receivers, and others in cases of liquidation or operational bankruptcies shall obtain a transaction privilege tax or use tax license.

C. If a licensee has any change in ownership, the licensee shall apply for a new license.

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1). Section R15-5-2202 renumbered from R15-5-2205 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2203. Change of Name or Trade Name

If a change is made in the name or trade name under which the business is operating and the ownership remains the same, the taxpayer shall apply for a new license.

Historical Note
Section R15-5-2203 renumbered to R15-5-2201, new Section R15-5-2203 renumbered from R15-5-2206 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2204. Change of Business Location or Mailing Address

A. The taxpayer shall apply for a new transaction privilege tax or use tax license if the physical location of the business changes.

B. The taxpayer shall notify the Department in writing of a change in mailing address.

Historical Note
Amended effective October 15, 1980 (Supp. 80-5). Section R15-5-2204 repealed, new Section R15-5-2204 renumbered from R15-5-2207 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2205. Surrender of License upon Sale or Termination of Business

If a business is sold or terminated, the taxpayer shall notify the Department in writing of the date of sale or termination and shall surrender the transaction privilege tax or use tax license to the Department.

Historical Note
Amended effective November 7, 1978 (Supp. 78-6). Section R15-5-2205 renumbered to R15-5-2202, new Section R15-5-2205 renumbered from R15-5-2209 effective October 14, 1993 (Supp. 93-4).

R15-5-2206. Cancellation of License

A. The Department may cancel a license if:
1. During any consecutive 12-month period, the licensee reports no taxable transaction; and
2. The licensee is not a subcontractor or wholesaler.

B. The Department shall notify a licensee in writing of its intention to cancel the license. The notice shall explain the action the licensee may take to contest cancellation of the license and when cancellation is final.

C. The Department shall cancel a license 30 days after the notice of intention to cancel is mailed unless, within 30 days, the licensee objects to the cancellation in writing and produces documentation that the licensee is actively engaged in a taxable business. Suitable documentation includes, but is not limited to, the following:
1. Evidence that the licensee holds an inventory of raw or finished tangible personal property for sale or resale;
2. Evidence that the licensee maintains segregated bank accounts for the purpose of transacting business;
3. Bona fide contracts for future sale or resale of tangible personal property;
4. Profit and loss statements for federal or state income tax purposes; or
5. Evidence that the licensee otherwise actually engages in bona fide business activities.

D. Within 30 days of receipt of the licensee's objections and documentation, the Department shall notify the licensee in writing of its decision to cancel or retain the license. If the decision is to cancel the license, the licensee may request an administrative hearing.

Historical Note
Section R15-5-2206 renumbered to R15-5-2203, new Section R15-5-2206 renumbered from R15-5-3018 effective October 14, 1993 (Supp. 93-4).

R15-5-2207. Taxpayer Bonds

A. The amount of the bond required under A.R.S. § 42-112 shall be the greater of five hundred dollars, or:
1. For licensees reporting monthly, four times the average monthly tax liability;
2. For licensees reporting quarterly, six times the average monthly tax liability; or
3. For licensees reporting annually, fourteen times the average monthly tax liability.

B. For purposes of determining the bond amount, the average monthly tax liability is equal to the average monthly tax due from the licensee for the preceding six consecutive months. If an applicant does not have a six-month payment history, the bond amount shall be a minimum of five hundred dollars.

C. If a licensee provides a surety bond and the bond lapses, the licensee must deposit with the Department cash or other security in an amount equal to the lapsed surety bond within five business days of the licensee's receipt of written notification by the Department.

D. The bond amount may be increased or decreased as necessary based upon a change in the licensee's previous filing period, filing compliance record, or payment history. If the bond amount has been increased above the amount computed under subsection (B) of this rule, the licensee may request a hearing pursuant to A.R.S. § 42-112 to show why the order increasing the bond amount is in error.

Historical Note

Former Section R15-5-2207 renumbered to R15-5-2204 effective October 14, 1993 (Supp. 93-4). New Section R15-5-2207 renumbered from R15-10-201 (Supp. 94-1).

R15-5-2208. Repealed

Historical Note

Repealed effective October 14, 1993 (Supp. 93-4).

R15-5-2209. Renumbered

Historical Note

Section R15-5-2209 renumbered to R15-5-2205 effective October 14, 1993 (Supp. 93-4).

R15-5-2210. Collection of Tax by the Vendor

A. The vendor may pass on the economic burden of the transaction privilege tax, either as an unspecified portion of the overall selling price or as a separate and distinct item of charge.

1. If a vendor elects to pass on the economic burden of the tax as a separate and distinct item of charge, the vendor's tax base shall not include any collected state, county, city, or town taxes.
2. If the vendor does not pass on the tax as a separate and distinct item of charge, the vendor may factor out the tax. See R15-5-2210.01.
3. The amount of tax on a transaction shall be the same whether the tax is stated as a separate and distinct item of charge or the tax is calculated using the factoring method.
4. Calculation of the amount of the tax using the separate and distinct item of charge method shall be as follows:

Price of tangible personal property	$100
Multiply the price by the applicable tax rate	
$100 times 5% equals the tax as calculated	$5
Total cost to the consumer	$105

B. All taxes collected shall be remitted to the Department and applicable taxing jurisdictions. If a vendor has collected tax in excess of the tax liability for the reporting period, the excess tax shall also be remitted.

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2). New Section adopted effective October 14, 1993 (Supp. 93-4). Reference correction (Supp. 95-2).

R15-5-2210.01. Factoring

"Factoring" means a method by which the taxpayer may determine the amount of the tax when the tax is collected as an unspecified part of the selling price.

1. The taxpayer may use any factoring method resulting in a tax amount equal to the tax as calculated using the separate and distinct item of charge method.
2. The following factoring method is approved and recommended by the Department.

   To calculate the tax under the factoring method, the total cost to the consumer is divided by one plus the cumulative amount of the state and applicable county, city, and town tax rates, stated as a decimal. The result of this calculation is then multiplied by the cumulative tax rate to arrive at the amount of the tax on the sale. The gross receipts subject to tax, plus the cumulative tax on that amount, shall equal the total cost to the consumer.

To factor:	
Total cost to the consumer	$105
Divide the total cost to the consumer by 1 plus the tax rate (1.00 plus .05)	
$105 divided by 1.05 equals the price of tangible personal property	$100
Tax as calculated ($100 times 5%)	$5

Historical Note

New Section adopted effective October 14, 1993 (Supp. 93-4).

R15-5-2211. Election of Basis to Report and Pay Taxes

A. The taxpayer, on the application for a transaction privilege tax or use tax license, shall elect to report and pay taxes based on either the "cash receipts" or the "accrual" method.

B. Under the cash receipts method, a sale is reported in the month in which payment is received. Under the accrual method, the sale is reported in the month in which it occurs without regard to when payment is received. Allowable deductions and exemptions shall be reported in a manner consistent with the reporting of the tax.

C. The basis of reporting shall not be changed without receiving written approval from the Department. The Department may audit the books of the taxpayer to adjust any tax liability resulting from the change.

Historical Note

Repealed effective July 23, 1985 (Supp. 85-4). New Section renumbered from R15-5-2213 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2212. Payment of Taxes

The taxpayer shall separately compute the tax liability for use taxes, city taxes, and the combined state and county taxes using the monthly report form, even though a single payment shall be remitted to the Department.

Historical Note

Repealed effective July 23, 1987 (Supp. 85-4). New Section R15-5-2212 renumbered from Section R15-5-3005 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2213. Quarterly and Annual Basis Reporting

New businesses shall report monthly for a minimum of 12 consecutive months to establish historical data, enabling the Department to subsequently authorize the reporting and remitting of tax on a quarterly or annual basis according to statutory limits.

Historical Note

Former Section R15-5-2213 renumbered to R15-5-2211, new Section R15-5-2213 adopted effective October 14, 1993 (Supp. 93-4).

R15-5-2214. Establishing the Right to a Deduction by Use of a Certificate or Other Documentation

A. The vendor is responsible for the payment of tax and therefore shall provide sufficient documentation in support of all deductions.

B. The vendor may establish a deduction or exclusion from the tax base pursuant to A.R.S. § 42-1316 or 42-1328.
1. If the purchaser does not have a valid license number, the purchaser shall indicate the reason on any certificate.
2. Marking an invoice may be done either by recording the purchaser's transaction privilege tax license number on the invoice or by cross referencing the specific transaction to the specific exemption certificate of the specific purchaser.
3. The Department has prescribed a certificate for establishing entitlement to statutory deductions. Reproductions of the blank prescribed original certificate shall be acceptable for use.
4. The appropriate certificate shall be accurately and fully completed by the purchaser.
5. If the vendor has reason to believe that the information contained in the certificate is not accurate, complete, or applicable to the transaction, the vendor may refuse to accept the certificate.
6. If at any time the vendor has reason to believe that the certificate is not applicable to a transaction, the vendor may refuse to honor the certificate for that transaction.
7. The Department may challenge the certificate as accepted by the vendor if the Department has reason to believe that the information in the certificate is incomplete, inaccurate, or if the exemption claimed is not based on statutory provisions. The burden of proof lies with the Department when a vendor accepts a completed departmental certificate and marks the applicable invoice pursuant to statute.

C. A blanket certificate may be accepted if the vendor and purchaser agree. The blanket certificate may continue in force, for applicable transactions, for a period of time as set forth on the certificate. For purposes of this rule, a blanket certificate is one which covers the indicated type of transaction over a specified period of time.
1. The vendor may refuse to honor a blanket certificate and shall cancel such a certificate if, at any time, the vendor has reason to believe that the information contained in the certificate is no longer accurate or complete or no longer applies.
2. A new, accurate, and complete certificate may then be accepted.

D. Documentation, including a certificate other than a departmental certificate, may be accepted by the vendor to establish the right to a deduction.
1. If the vendor accepts a form of documentation other than a completed departmental certificate, the burden of proof remains with the vendor to establish the right to the deduction.
2. Other documentation necessary to establish a deduction from the tax base shall contain the information required by A.R.S. § 42-1316(A).

E. Documentation or a certificate to establish a deduction from the tax base shall be provided for each transaction or if a blanket certificate is used for each different exemption category.

F. The vendor shall retain all documentation for the required statutory period pursuant to A.R.S. § 42-113.

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-2214 adopted effective October 14, 1993 (Supp. 93-4).

R15-5-2215. Return and Payment of Tax-estimated Tax

A. For purposes of this rule, the following definitions apply:
1. "Annual estimated tax payment" means ½ of the total tax liability for the entire month of May or the total tax liability for the 1st 15 days of the month of June.
2. "Annual tax liability" means a total tax liability of $100,000.00 or more in the preceding calendar year or a reasonable anticipation of a total tax liability of $100,000.00 or more in the current year.
3. "Taxpayer" has the meaning set forth in A.R.S. § 42-1322(J). The following are considered a single taxpayer:
   a. Members of an Arizona-affiliated group filing a consolidated corporate income tax return under A.R.S. § 43-947;
   b. Corporations in a unitary business filing a combined corporate income tax return under A.A.C. R15-2-1131(E);
   c. Married taxpayers operating separate sole proprietorships and filing a joint income tax return; or
   d. Partnerships, Limited Liability Companies, S Corporations, trusts, or estates conducting multiple businesses, filing a single income tax return.
4. "Total tax liability" means the combined total of the transaction privilege tax, telecommunications services excise tax, and county excise tax liabilities.

B. The requirement to make an annual estimated tax payment is based on the annual tax liability. Use tax and severance tax are not subject to the estimated tax provisions.
1. A taxpayer shall make an annual estimated tax payment if during the current calendar year the taxpayer, through use of ordinary business care and prudence, can anticipate incurring the annual tax liability. For example:
   ABC Company has been selling home electronics for several years. Its tax liability for previous calendar years has averaged between $60,000 and $70,000. In February of the current year, ABC Company begins selling computers and accessories as well. Early sales reports show an increase in total sales of approximately 50%. Based on these facts, ABC Company can reasonably anticipate incurring the annual tax liability.
2. Taxpayers with multiple locations shall make the annual estimated tax payment based on the combined actual or anticipated annual tax liability from all locations. Taxpayers with multiple locations, shall make a single estimated payment each June.

C. A taxpayer shall not amend an annual estimated tax payment except to increase the amount of the payment.

D. The annual estimated tax payment shall not be applied, credited, or refunded until a Transaction Privilege, Use, and Severance Tax Return (TPT-1) for the month of June is filed.

E. Late payment, underpayment, or non-payment of the annual estimated tax payment shall result in the following:
1. Application of the penalty provisions under A.R.S. § 42-136;
2. Accrual of interest beginning from the due date of the annual estimated tax payment as prescribed in A.R.S. § 42-1322(D); and
3. Loss of the accounting credit, as defined in A.R.S. § 42-1322.04 for the June reporting period.

F. Taxpayers who are not required to make the annual estimated tax payment but make a voluntary annual estimated payment are not subject to subsection (E).

Historical Note
Former Section R15-5-2215 renumbered to R15-5-2004, new Section R15-5-2215 renumbered from R15-5-212

effective October 14, 1993 (Supp. 93-4). Amended effective April 8, 1997 (Supp. 97-2).

R15-5-2216. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2217. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2218. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2219. Renumbered

Historical Note
Renumbered to R15-5-3005 effective July 23, 1985 (Supp. 85-4).

R15-5-2220. Registration and Licensing

A. Out-of-state vendors making sales to Arizona purchasers shall obtain a use tax license from the Department.

B. Use tax collected on an isolated sale to an Arizona customer may be remitted under a cover letter rather than on a standard report form.

Historical Note
Repealed effective July 23, 1985 (Supp. 85-4). New Section R15-5-2220 renumbered from R15-5-2363 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2221. Remittal of Use Tax on Purchases from Unlicensed Retailers

A. Arizona purchasers regularly making purchases from unlicensed vendors, where the purchases are subject to use tax, shall obtain a use tax license and remit payments directly to the Department.

B. An Arizona purchaser who is licensed in Arizona shall remit the use tax to the Department on the purchaser's Sales, Use, and Severance Tax Return (ST-1) if tangible personal property is purchased from an out-of-state retailer who is not licensed to collect the use tax.

C. An Arizona purchaser who is not licensed in Arizona shall remit the use tax to the Department under a cover letter if tangible personal property is purchased from an out-of-state retailer who is not licensed to collect the use tax.

Historical Note
Amended effective March 18, 1981 (Supp. 81-2). Repealed effective February 22, 1989 (Supp. 89-1). New Section adopted effective October 14, 1993 (Supp. 93-4).

R15-5-2222. Record Retention

A vendor collecting use tax from a purchaser shall keep and preserve suitable records and other books and accounts necessary to determine the tax collected for the statutorily prescribed limitation period. For purposes of this rule, the limitation period is the period of time for which the Department may assess tax, penalties, or interest pursuant to A.R.S. § 42-113. Records, books, and accounts shall be open for inspection at any reasonable time by the Department or its authorized agent.

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1). New Section adopted effective October 14, 1993 (Supp. 93-4).

R15-5-2223. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2224. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2225. Repealed

Historical Note
Repealed effective March 18, 1981 (Supp. 81-2).

R15-5-2226. Repealed

Historical Note
Repealed effective March 18, 1981 (Supp. 81-2).

R15-5-2227. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-2228. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2229. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2230. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2231. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2232. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2233. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2234. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2235. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2236. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-2237. Repealed

Historical Note
Repealed effective April 13, 1987 (Supp. 87-2).

R15-5-2238. Reserved

R15-5-2239. Reserved

R15-5-2240. Motion Picture Production Refund

A. The following definitions apply for purposes of determining qualification for the refund of transaction privilege and use tax by a motion picture company under A.R.S. § 42-1322.01:
1. "Checking account in a financial institution in this state" means a checking account in an Arizona office or branch office of a financial institution.
2. "Completing the filming or production activities" means the later of the date the motion picture production company closes the checking account at the Arizona financial institution or the date production activities are completed in the state.
3. "Motion picture" means any audiovisual work with a series of related images either on film, tape, or other embodiment, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced, adapted, or altered for exploitation as entertainment, advertising, promotional, industrial, or educational media.
4. "Production activities" means those support activities related to the filming of a motion picture but which may occur before or after the actual filming begins or ends in Arizona.
5. "Qualified expenditures" means monies spent in Arizona except for those items which are statutorily excluded.

B. Tangible personal property, upon which Arizona tax was paid, which was purchased or leased in Arizona from an Arizona vendor or which was purchased from an out-of-state vendor, while the motion picture production company was engaged in production or filming in Arizona, shall qualify for refund treatment of the transaction privilege or use tax.

C. Copies of records which support the claim for refund as documented by the total expenditure report, the payroll expenditure report, and the final expenditure report shall be made available to the Department upon request.

D. The person designated pursuant to A.R.S. § 42-1322.01(B) as responsible for maintaining records of expenditures shall retain the records for the statutorily required period of time pursuant to A.R.S. § 42-113.

Historical Note
Adopted effective April 21, 1994 (Supp. 94-2).

R15-5-2241. Spending Requirements

A. A motion picture production company shall satisfy the statutory spending requirements prior to applying for a refund.

B. The statutory 12-month period begins with the first expenditure in the state reported at the discretion of the motion picture company.

C. For purposes of determining includible expenditures within a 12-month period, the following shall apply:
1. The date of the expenditure, regardless of the method of payment, shall establish the qualification of the expenditure in satisfying the statutory requirement.
2. Any expenditure made by credit card or petty cash shall be includible if the following conditions are met prior to the submission of the refund request:
   a. The credit card liability shall be paid through the checking account in a financial institution in this state; and
   b. The petty cash account shall be reimbursed through the checking account in a financial institution in this state.

D. For purposes of determining the location of a transaction, the following criteria shall apply:
1. For retail purchases of tangible personal property, the location of the transaction shall be determined at the time and place that the customer takes title to the personal property. Title passes at the time and place of the physical delivery of the goods to the purchaser absent any agreement to the contrary. If an agreement exists regarding the delivery of the tangible personal property, title passes at the location designated in the agreement.
2. For leases of tangible personal property, the location of the transaction shall be determined pursuant to Article 15.

Historical Note
Adopted effective April 21, 1994 (Supp. 94-2).

R15-5-2242. Reports

A. The motion picture production company shall submit the following reports when applying for a refund of transaction privilege or use taxes paid:
1. The total expenditure report in order to document that the company has had at least $1 million in total qualified expenditures during the 12-month period and which shows that the expenditures were paid through a financial institution in this state;
2. The payroll expenditure report for purposes of documenting salaries and wages paid to Arizona residents filing an Arizona personal income tax return in the preceding year; and
3. The final expenditure report documenting purchases and leases of tangible personal property within the state of Arizona upon which a tax refund may be obtained.

B. The total expenditure report shall include the following:
1. The name of the vendor,
2. The period covered,
3. A description of the expenditure, and
4. The total amount of the expenditure.

C. The payroll expenditure report shall include the following:
1. Employee name;
2. Employee social security number;
3. Period covered, and
4. Total wages paid to each employee for the period.

D. The final expenditure report shall include the following:
1. Name of vendor;
2. Arizona Transaction Privilege Tax license number of any vendor if purchases or leases of tangible personal property from that vendor total $500 or more;
3. Purchase order numbers or vendor's invoice numbers, including dates;
4. Name of financial institution and the number of the check which was used to purchase or lease tangible personal property;
5. Credit card number used to purchase or lease tangible personal property;
6. Date of purchase or lease;
7. Description of tangible personal property purchased or leased;
8. City where tangible personal property purchased or leased;
9. Price of tangible personal property before tax;
10. Total amount of tax paid; and
11. Type of tax paid: transaction privilege or use tax.

E. Forms as issued by the Department of Revenue may be used for submission of the required information.

Historical Note
Adopted effective April 21, 1994 (Supp. 94-2).

ARTICLE 23. USE TAX

R15-5-2301. Definitions

The following definitions apply for the Department's administration of use tax:

1. "Mail order retailer" means a retailer who solicits orders by mail, notwithstanding the fact that orders may be received by telephone or by mail or that goods may be delivered by mail or by private delivery system.
2. "Purchases" means purchase for storage, use, or consumption in Arizona.
3. "Retailer" includes any retailer located outside this state who solicits orders for tangible personal property by mail from points in this state if the solicitations are substantial and recurring.

Historical Note
Repealed effective July 23, 1985 (Supp. 85-4). New Section R15-5-2301 adopted effective December 6, 1990 (Supp. 90-4). Amended effective September 29, 1993 (Supp. 93-3).

R15-5-2302. General

A. The Use Tax Act imposes upon the buyer a tax on the purchase of tangible personal property from an out-of-state vendor.

B. The tax applies to the use, storage, or consumption of items purchased from out-of-state suppliers.

C. In cases where the buyer has paid Sales Tax to an out-of-state seller, the amount paid may be applied against his Arizona Use Tax liability.

R15-5-2303. Repealed

Historical Note
Repealed effective January 16, 1997 (Supp. 97-1).

R15-5-2304. Presumption of Taxability of Property Brought into Arizona

A. If tangible personal property is purchased outside Arizona and is subsequently brought into this state for use, storage, or consumption, the purchaser of such property shall be subject to the Arizona use tax unless the purchaser establishes to the satisfaction of the Department:
1. That the property is not used in conducting a business in Arizona; and
2. That the property was purchased for bona fide use or consumption outside Arizona. Unless shown otherwise, it shall be presumed that the property was purchased for bona fide use or consumption outside of Arizona if the property was purchased at least three months prior to its initial entry into Arizona; or
3. If the property was purchased by a nonresident individual, that the first actual use or consumption of the property occurred outside Arizona.

B. It shall be presumed that property brought into the state is subject to the use tax. The burden of proof that a purchase is not subject to use tax rests upon the purchaser.

Historical Note
Former Section R15-5-2311 repealed, new Section R15-5-2311 adopted effective August 7, 1985 (Supp. 85-4). Former Section R15-5-2304 repealed, new Section R15-5-2304 renumbered from R15-5-2311 and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2305. Credit for Sales Tax Paid in State of Purchase

A. When a Sales Tax has been paid in the state of purchase equal to or greater than the Arizona Use Tax, the purchaser has no further liability.

B. In cases where the amount of Sales Tax paid in the state of purchase is less than the Arizona Use Tax, the purchaser has an additional liability to the state of Arizona. For example, if the amount of tax paid in another state is 3% of the purchase price and the Arizona Use Tax rate is 4%, the purchaser is required to pay an additional 1%.

R15-5-2306. Distinction Between Sales Tax and Use Tax

A. The Sales Tax is imposed on sales made by vendors located within Arizona, while the Use Tax is levied on purchases from out-of-state vendors.

B. Since the Sales Tax and Use Tax are complementary taxes, only one of the taxes can be applied to a given transaction.

R15-5-2307. When a Transaction is Subject to the Sales Tax

Sales made by vendors maintaining a place of business within Arizona are subject to the Sales Tax. Sellers operating from a commercial location or point of distribution, soliciting from a public place of business, or buying and selling articles on their own account within the state are deemed to be in business in Arizona.

For example, an office equipment dealer maintains a sales office in Arizona, solicits business from customers in Arizona, and orders the equipment from its home office out of state. Although the seller maintains no stock of inventory in Arizona and the products are shipped directly to the purchaser, he is nevertheless considered to be engaging in business within the state for purposes of this regulation. Such sales are taxable under the Sales Tax statutes.

R15-5-2308. When a Transaction is Subject to the Use Tax

Purchases made from vendors not maintaining a place of business in this state to Arizona customers are subject to the Use Tax. For example, purchases from an out-of-state vendor selling by mail order to Arizona residents are subject to the Use Tax.

R15-5-2309. Exemptions -- Purchases for Resale or Lease

A. Purchases of tangible personal property from a retailer for resale in the ordinary course of the purchaser's business shall not be subject to the use tax.

B. Purchases of tangible personal property from a retailer for subsequent leasing or renting in the ordinary course of the purchaser's business shall not be subject to the use tax.

Historical Note
Former Section R15-5-2309 renumbered to R15-5-2363, new Section R15-5-2309 renumbered from R15-5-2322 and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2310. Payment of Use Tax by Purchaser

A. The Use Tax must be paid to:
1. An out-of-state vendor holding a certificate of authority for the collection of Use Tax, or
2. The Arizona Department of Revenue in cases where the vendor is not registered for the collection of the tax.

B. Arizona purchasers making recurring purchases from out of state may apply to the Department for a registration certificate and remit payment directly to the state on a monthly report form in lieu of making payment to the vendor.

C. The purchaser will be relieved of his liability for the tax when payment is made directly to the out-of-state vendor registered and a receipt of the tax paid is obtained by him.

R15-5-2311. Renumbered

Historical Note
Former Section R15-5-2311 repealed, new Section R15-5-2311 adopted effective August 7, 1985 (Supp. 85-4). Former Section R15-5-2311 renumbered to R15-5-2304 effective September 29, 1993 (Supp. 93-3).

R15-5-2312. Casual Sales

Tangible personal property purchased in a casual sale, as defined in R15-5-2001, is not taxable.

Historical Note
Former Section R15-5-2312 repealed, new Section R15-

5-2312 adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2313. Lease-purchase Agreements

A. Purchase payments made after conversion from a lease to a purchase of tangible personal property shall be subject to the use tax unless the lease-purchase transaction is subject to the transaction privilege tax.

B. The purchase price of tangible personal property shall include conversion charges paid or incurred at the time the lease is converted to a purchase.

Historical Note

Former Section R15-5-2313 repealed, new Section R15-5-2313 adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2314. Purchases from Trustees, Receivers, and Assignees

A. Tangible personal property purchased for storage, use, or consumption in Arizona from a trustee, receiver, or assignee shall be subject to use tax if the purchase of the tangible personal property in the hands of the owner would have been subject to the use tax.

B. Tangible personal property purchased for storage, use, or consumption in Arizona from a trustee, receiver, or assignee shall not be subject to the use tax if the purchase of the property from the owner would have been exempt.

Historical Note

Former Section R15-5-2314 renumbered to R15-5-2321, new Section adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2315. Renumbered

Historical Note

Former Section R15-5-2315 renumbered to R15-5-3006 effective July 23, 1985 (Supp. 85-4).

R15-5-2316. Repealed

Historical Note

Repealed effective September 29, 1993 (Supp. 93-3).

R15-5-2317. Renumbered

Historical Note

Former Section R15-5-2317 renumbered to R15-5-2352 effective September 29, 1993 (Supp. 93-3).

R15-5-2318. Repealed

Historical Note

Repealed effective September 29, 1993 (Supp. 93-3).

R15-5-2319. Renumbered

Historical Note

Former Section R15-5-2319 renumbered to R15-5-2353 effective September 29, 1993 (Supp. 93-3).

R15-5-2320. Exemptions -- Machinery or Equipment

A. Machinery or equipment used in manufacturing or processing includes machinery or equipment that constitutes the entire primary manufacturing or processing operation from the initial stage where actual processing begins through the completion of the finished end product, and that is used in the production, manufacture, fabrication, processing, finishing, or packaging of articles of commerce. Manufacturing is the performance as a business of an integrated series of operations which place tangible personal property in a form, composition, or character different from that in which it was acquired, and transforms it into a different product with a distinctive name, character, or use.

B. Purchase of repair or replacement parts for exempt machinery or equipment is not subject to the use tax. Repair or replacement parts are defined as those individual component and constituent items which, together, comprise exempt machinery or equipment.

Historical Note

Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6). Amended subsection (B) effective March 18, 1981 (Supp. 81-2). Former Section R15-5-2320 renumbered to R15-5-2362, new Section R15-5-2320 renumbered from R15-5-2321 and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2321. Exemptions -- Articles to be Incorporated into a Manufactured Product

Purchases of articles which become an integral part of a manufactured product are not subject to the Use Tax. They are considered purchases for resale.

Historical Note

Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6). Amended paragraphs (9) and (10) effective March 18, 1981 (Supp. 81-2). Former Section R15-5-2321 renumbered to R15-5-2320, new Section R15-5-2321 renumbered from R15-5-2314 effective September 29, 1993 (Supp. 93-3).

R15-5-2322. Renumbered

Historical Note

Former Section R15-5-2322 renumbered to R15-5-2309 effective September 29, 1993 (Supp. 93-3).

R15-5-2323. Repealed

Historical Note

Amended effective November 7, 1978 (Supp. 78-6). Repealed effective September 29, 1993 (Supp. 93-3).

R15-5-2324. Repealed

Historical Note

Repealed effective September 29, 1993 (Supp. 93-3).

R15-5-2325. Repealed

Historical Note

Repealed effective September 29, 1993 (Supp. 93-3).

R15-5-2326. Manufacturing Labor

The cost of labor employed in the manufacturing, processing, or fabricating of tangible personal property shall not be allowed as a deduction from the sales price on a purchase of such property.

Historical Note

Former Section R15-5-2326 repealed, new Section R15-5-2326 adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2327. Fuels

A. For purposes of this rule, "use fuel" means fuel other than motor vehicle fuel as defined in A.R.S. § 28-101(28). Diesel fuel is a use fuel. Gasoline is a motor vehicle fuel.

B. Purchases of use fuel are taxable if the use fuel is not used to propel vehicles on the streets, roads, or highways of this state.

C. Purchases of jet fuel are subject to tax under the jet fuel excise and use tax classification.

Historical Note

Former Section R15-5-2327 renumbered to R15-5-2360, new Section R15-5-2327 renumbered from R15-5-3006

and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2328. Electric Power Transmission and Distribution
Purchases of machinery, equipment, or transmission lines for direct use in producing or transmitting power but not including distribution are subject to use tax based on the same definitions as in R15-5-128.

Historical Note
Former Section R15-5-2328 renumbered to R15-5-2361, new Section R15-5-2328 adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2329. Repealed

Historical Note
Former Section R15-5-2329 repealed effective September 29, 1993 (Supp. 93-3).

R15-5-2330. Tangible Personal Property Used in Conjunction with Warranty or Service Contracts
A. For purposes of this rule, "covered" tangible personal property is that which is included in the charge for the warranty or service contract and the warranty or service contract holder is not additionally charged for such property.
B. A warrantor or service person shall be liable for use tax on the cost of covered tangible personal property which is purchased for resale but which is subsequently taken out of inventory and is used in performing work under a warranty or service contract.
C. Tangible personal property used in performing work under a warranty or service provision, as delineated in R15-5-137(B) shall not be subject to the tax.

Historical Note
Adopted effective September 3, 1978 (Supp. 78-6). Former Section R15-5-2330 renumbered to R15-5-2343, new Section R15-5-2330 adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2331. Repealed

Historical Note
Adopted as an emergency effective July 1, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Former emergency adoption now adopted effective October 15, 1980 (Supp. 80-5). Repealed effective September 29, 1993 (Supp. 93-3).

R15-5-2332. Delivery Charges
A charge by a retailer for delivery from the retailer's location to the purchaser's location, if separately stated on the sales invoice, is not taxable.

Historical Note
Adopted effective December 6, 1990 (Supp. 90-4). Former Section R15-5-2332 renumbered to R15-5-2350, new Section R15-5-2332 adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2333. Reserved

R15-5-2334. Purchases of Restaurant Accessories
A. Purchases of disposable containers, paper napkins, and other similar food accessories by persons engaged in the restaurant business that are transferred by the restaurant in the regular course of business to facilitate the consumption of the food, drink, or condiment provided shall be considered purchases for resale.
B. Purchases of matchbooks, advertisement fliers, and other similar tangible personal property by persons engaged in the restaurant business that are transferred by the restaurant for the convenience, operation, or benefit of the restaurant business are taxable.

Historical Note
Adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2335. Reserved

R15-5-2336. Reserved

R15-5-2337. Reserved

R15-5-2338. Reserved
R15-5-2339. Reserved

R15-5-2340. Tangible Personal Property Used in Soil Remediation Activities
The purchase of tangible personal property for incorporation or fabrication into any real property, structure, project, development or improvement under a contract specified in A.R.S. § 42-1310.16 (B)(6) is exempt from tax. The purchase of tangible personal property used in soil remediation activities but not incorporated or fabricated into any real property, structure, project, development or improvement is taxable.

Historical Note
Adopted effective December 11, 1998 (Supp. 98-4).

R15-5-2341. Four-inch Pipes or Valves
Purchases of pipes, valves, or fire hydrants with an inside diameter of four inches or more are not taxable if the pipes, valves, or fire hydrants are to be used to transport oil, natural gas, artificial gas, water, or coal slurry.

Historical Note
Adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2342. Computer Hardware and Software
Purchases of computer hardware and software are subject to the use tax based on the same provisions as delineated in R15-5-154.

Historical Note
Adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2343. Purchases of Prescription Drugs and Prosthetic Appliances
A. For purposes of this rule, the following definitions apply:
1. "Drugs on a prescription" means those substances which can only be dispensed on the direction of a member of the medical, dental, or veterinary profession, who is licensed by law to administer such drugs and which cannot be purchased without such authorization. A legend drug is considered a drug on a prescription.
2. "Hearing aid" means any wearable device designed for aiding or compensating for defective human hearing including parts, attachments, accessories, and earmolds.
3. A "legend drug" is a drug which bears the statement *CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT PRESCRIPTION.*
4. "Nonprescription drugs" means a substance which can be purchased without a prescription even though it may be recommended by a member of the medical, dental, or veterinarian profession.
5. "Prescription drugs" are drugs on a prescription.
6. "Prescription eyeglasses" includes frames and component parts if purchased for use with the prescription lenses.
7. "Prosthetic appliance" means an artificial device which fully or partially replaces a part or function of the human body or increases the acuity of a sense organ.

B. Purchases of the following items are not taxable:
1. Drugs on a prescription.
2. Medical oxygen, pursuant to statute.

3. Insulin, insulin syringes, and glucose strips whether or not prescribed.
4. Prosthetic appliances prescribed or recommended by a statutorily authorized individual.
5. Durable medical equipment pursuant to statute.
6. Prescription eyeglasses and contact lenses.
7. Hearing aids. Batteries and cords do not qualify as exempt.

C. Unless otherwise stated, purchases of component and repair parts for any property included in this rule are not taxable.

D. If a prescription or recommendation is required to purchase the tangible personal property, the required prescription or recommendation shall be in writing and maintained as part of the vendor's records.

E. Purchases of nonprescription drugs and other medical supplies and appliances by doctors, dentists, or veterinarians ar taxable.

1. Purchases of nonprescription drugs and other medical supplies and appliances by doctors, dentists, and veterinarians are not taxable if the tangible personal property qualifies as a purchase for resale, and the doctor, dentist, or veterinarian is a retailer in the business of reselling such property.
2. Purchases of prescription drugs for use in the course of treating patients are not taxable if the prescription drugs are sold to a member of the medical, dental, or veterinarian profession who is licensed by law to administer prescription drugs.
3. Purchases of prescription drugs are not taxable if the prescription drugs are sold to an organization where the prescription drugs are used in the course of treating patients and are administered under the direction of a member of the medical, dental, or veterinarian profession who is licensed by law to administer such drugs.

Historical Note
Renumbered from R15-5-2330 and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2344. Reserved

R15-5-2345. Reserved

R15-5-2346. Reserved

R15-5-2347. Reserved

R15-5-2348. Reserved

R15-5-2349. Reserved

R15-5-2350. Mail Order Retailers
This rule is not a limitation on other provisions of Arizona Revised Statutes, Title 42, Chapter 8. Article 2. A mail order retailer's transactions are substantial and recurring if the following conditions are satisfied:

1. The sale of tangible personal property would be subject to transaction privilege taxation if the transaction would have occurred in this state, and
2. During any 12-month period:
   a. The retailer's total sales in this state exceed $100,000.00; or
   b. Two or more mailings, aggregating 5,000 or more solicitations, are made to points in this state.

Historical Note
Adopted effective December 6, 1990 (Supp. 90-4). Renumbered from R15-5-2332 effective September 29, 1993 (Supp. 93-3).

R15-5-2351. Purchases by Non-U.S. Citizens
Purchases of tangible personal property by non-U.S. citizens shall be subject to the use tax unless otherwise exempt.

Historical Note
Adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2352. Nonresident Exemption

A. Tangible personal property brought into Arizona by a nonresident to be used in a business in Arizona shall be subject to the use tax.

B. Tangible personal property brought into Arizona for use by a nonresident temporarily within the state is not subject to the tax if the property is for the personal use of the nonresident and is taken out of the state when the nonresident leaves the state.

C. If tangible personal property is purchased outside Arizona and is subsequently brought into this state for use, storage, or consumption, the purchaser of such property shall be subject to the Arizona use tax unless the purchaser establishes to the satisfaction of the Department:

1. That the property is not used in conducting a business in Arizona; and
2. That the property was purchased for bona fide use or consumption outside Arizona. Unless it can otherwise be shown, it shall be presumed that the property was purchased for bona fide use or consumption outside of Arizona if the property was purchased at least three months prior to its initial entry into Arizona; or
3. If the property was purchased by a nonresident individual, that the first actual use or consumption of the property occurred outside Arizona.

Historical Note
Section R15-5-2352 renumbered from R15-5-2317 and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2353. Property Purchased Outside of the United States

A. Tangible personal property purchased outside of the United States is taxable when purchased for business use.

B. In any one calendar month, tangible personal property purchases with a cumulative purchase price of $200 or less are not taxable if purchased for nonbusiness use. Purchases in excess of the $200 exemption are taxable on the excess amount.

Historical Note
Section R15-5-2353 renumbered from R15-5-2319 and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2354. Reserved

R15-5-2355. Reserved

R15-5-2356. Reserved

R15-5-2357. Reserved

R15-5-2358. Reserved

R15-5-2359. Reserved

R15-5-2360. Government Purchases

A. Purchases of tangible personal property by any state or its political subdivisions are taxable.

B. Purchases by the Federal Government are not taxable.

Historical Note
Section R15-5-2360 renumbered from R15-5-2327 and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2361. Nonprofit Organizations

A. Purchases of tangible personal property by nonprofit churches, schools, and other nonprofit organizations are taxable unless otherwise exempt.

B. Purchases of tangible personal property from a charitable nonprofit organization recognized as having tax-exempt status for income tax purposes with the Internal Revenue Service and the Department are not taxable.

C. If an organization wishes to obtain tax-exempt status by being recognized by the Department as a nonprofit charitable organization, it shall submit a letter to the Department requesting tax-exempt status and shall include a copy of its Internal Revenue Service recognition.

D. For purposes of the statutory exemption and for this rule, the Internal Revenue Service recognition of a charitable nonprofit organization is as defined in Internal Revenue Code § 501(c)(3).

Historical Note

Section R15-5-2361 renumbered from R15-5-2328 and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2362. Exempt Purchases by Health Organizations

A. Purchases by qualifying hospitals, nursing care institutions, qualifying health care organizations, rehabilitation programs for mentally or physically handicapped persons, and qualifying community health centers are exempt from tax pursuant to statutory provisions.

B. The Department may, upon review of the written request and any other information requested by the Department to make a proper determination, provide an Exemption Letter to organizations meeting the statutory criteria. The Exemption Letter shall be valid for a period of 12 months from the first day of the month following the issue date of the Exemption Letter unless the organization's tax exempt status changes prior to the end of the 12-month period, or the organization misrepresented or omitted material information in its exemption request.

C. Qualifying hospitals, qualifying health care organizations, rehabilitation programs for mentally or physically handicapped persons, and qualifying community health centers shall annually submit to the Department a written request for an Exemption Letter. The request shall be submitted at least 30 days prior to the first day of the exemption period. For purposes of this rule, "exemption period" means the 12-month period beginning on the first day of the month following the issue date of the Exemption Letter or the 12-month period requested by the organization.

1. Qualifying hospitals shall attach to their annual exemption request a copy of their current license issued by the Department of Health Services.
2. Qualifying health care organizations shall attach to their exemption request letter the statutorily required annual financial audit and a copy of their Internal Revenue Code 501(c) recognition unless the Department has previously received a copy of this recognition.
3. Rehabilitation programs for mentally or physically handicapped persons shall attach to their exemption request a copy of their Internal Revenue Code 501(c)(3) recognition unless the Department has previously received a copy of this recognition.
4. Qualifying community health centers shall attach to their exemption request documentation supporting the statutory criteria and a copy of their Internal Revenue Code 501(c)(3) recognition unless the Department has previously received a copy of this recognition.

Historical Note

Section R15-5-2362 renumbered from R15-5-2310 and amended effective September 29, 1993 (Supp. 93-3). Amended effective April 21, 1995 (Supp. 95-2).

R15-5-2363. Renumbered

Historical Note

Renumbered from R15-5-2309 effective September 29, 1993 (Supp. 93-3). Renumbered to R15-5-2220 effective October 14, 1993 (Supp. 93-4).

ARTICLE 24. REPEALED

R15-5-2401. Repealed

Historical Note

Repealed effective October 14, 1993 (Supp. 93-4).

R15-5-2402. Repealed

Historical Note

Repealed effective October 14, 1993 (Supp. 93-4).

R15-5-2403. Repealed

Historical Note

Repealed effective October 14, 1993 (Supp. 93-4).

R15-5-2404. Repealed

Historical Note

Repealed effective October 14, 1993 (Supp. 93-4).

R15-5-2405. Repealed

Historical Note

Repealed effective October 14, 1993 (Supp. 93-4).

R15-5-2406. Repealed

Historical Note

Amended effective March 18, 1981 (Supp. 81-2). Repealed effective October 14, 1993 (Supp. 93-4).

R15-5-2407. Repealed

Historical Note

Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-2408. Repealed

Historical Note

Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-2409. Repealed

Historical Note

Repealed effective October 14, 1993 (Supp. 93-4).

R15-5-2410. Repealed

Historical Note

Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2411. Repealed

Historical Note

Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-2412. Repealed

Historical Note

Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-2413. Repealed

Historical Note

Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-2414. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2415. Repealed

Historical Note
Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-2416. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2417. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2418. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2419. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2420. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2421. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2422. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2423. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2424. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2425. Repealed

Historical Note
Repealed effective September 24, 1986 (Supp. 86-5).

R15-5-2426. Repealed

Historical Note
Repealed effective April 21, 1995 (Supp. 95-2).

ARTICLE 25. RENTAL OCCUPANCY TAX

R15-5-2501. Rate

Effective date of tax rate:	1/1/75
Current combined tax rate:	3%

R15-5-2502. General
The Rental Occupancy Tax Act imposes a tax on the tenant for the privilege of occupancy of any real property when the right to occupy the property resulted from a written lease entered into prior to 12/1/67 (pre-existing lease).

R15-5-2503. Basis for computing tax
The amount of the tax is based upon the total value of the rent paid to the landlord.

R15-5-2504. Remittance to landlord
The tenant is required to remit the tax to the landlord, who is acting as a collecting agent for the state. The tax is to be remitted at the same time payment of the rent is made.

R15-5-2505. Termination of liability
The tax will apply until such time as the lease either expires, is renewed, renegotiated, or otherwise terminated. When such lease no longer comes under the provision of the Rental Occupancy Tax Act, the landlord becomes subject to the Sales Tax (see R15-5-1610).

R15-5-2506. Exemptions
A. The tax does not apply in cases where the United States Government is either the tenant or the landlord.
B. Effective January 1, 1979, the leasing or renting of dwelling units, lodging facilities or trailer or mobile home spaces which are intended primarily as principal or permanent places of residence, as defined in R15-5-1613, is exempt.

Historical Note
Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6).

R15-5-2507. Subleasing of property
A tenant who subleases the property (or portion thereof) originally leased from a landlord under a pre-existing lease agreement is still liable for Sales Tax as a lessor when the sublease agreement does not qualify as a pre-existing lease.

Historical Note
Amended effective March 18, 1981 (Supp. 81-2).

ARTICLE 26. RENTAL OCCUPANCY TAX -- ADMINISTRATION

R15-5-2601. Registration of landlords
Every landlord leasing property subject to the provisions of this rule is required to register as a collecting agent with the Department on prescribed forms.

R15-5-2602. Return and payment of tax -- general
A. The landlord is required to report and pay the tax collected by the last day of the month following the month for which the report is made. (For example: a report covering the month of August would be due September 30.)
B. In the event the landlord is unable to collect the tax from the tenant, the landlord is required to notify the Department in writing within the time prior to when the monthly report is due.

R15-5-2603. Return and payment of tax -- extension of time
The taxpayer may petition the Department for an extension of time for filing the report, and the Department, for good cause, may grant the extension. However, the time for filing shall not be extended for more than two months beyond the date the report was required to be filed.

R15-5-2604. Repealed

Historical Note
Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-2605. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2606. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2607. Repealed

Historical Note
Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-2608. Repealed

Historical Note
Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-2609. Repealed

Historical Note
Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-2610. Repealed

Historical Note
Repealed effective July 23, 1985 (Supp. 85-4).

R15-5-2611. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2612. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2613. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2614. Procedure for appeal -- payment of tax after decision of Department becomes final
When 30 days have expired after notice of a decision has been given the taxpayer, and the taxpayer has not taken further action to appeal to the state Board of Tax Appeals, Division Two, the tax must be paid within ten days after the 30-day period has expired.

R15-5-2615. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2616. Procedure for appeal -- payment of tax after appeal to State Board
The tax must be paid within 30 days from the time the State Board's decision becomes final unless the State Board rules in favor of the taxpayer.

R15-5-2617. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2618. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2619. Repealed

Historical Note
Repealed effective February 22, 1989 (Supp. 89-1).

R15-5-2620. Repealed

Historical Note
Repealed effective April 21, 1995 (Supp. 95-2).

ARTICLE 27. RESERVED

ARTICLE 28. RESERVED

ARTICLE 29. RESERVED

ARTICLE 30. INTERIM RULES

R15-5-3001. Reserved

R15-5-3002. Reserved

R15-5-3003. Reserved

R15-5-3004. Renumbered

Historical Note
(A.R.S. § 1321) Former Section R15-5-1846 renumbered as Section R15-5-3004 and amended effective July 23, 1985 (Supp. 85-4). Renumbered to R15-5-127 effective August 9, 1993 (Supp. 93-3).

R15-5-3005. Renumbered

Historical Note
(A.R.S. § 42-1451) Former Section R15-5-2219 renumbered as Section R15-5-3005 and amended effective July 23, 1985 (Supp. 85-4). Former Section R15-5-3005 renumbered to R15-5-2212 effective October 14, 1993 (Supp. 93-4).

R15-5-3006. Renumbered

Historical Note
(A.R.S. § 42-1409) Former Section R15-5-2315 renumbered as Section R15-5-3006 and amended effective July 23, 1985 (Supp. 85-4). Former Section R15-5-3006 renumbered to R15-5-2327 effective September 29, 1993 (Supp. 93-3).

R15-5-3007. Reserved

R15-5-3008. Reserved

R15-5-3009. Reserved

R15-5-3010. Reserved

R15-5-3011. Reserved

R15-5-3012. Reserved

R15-5-3013. Reserved

R15-5-3014. Reserved

R15-5-3015. Reserved

R15-5-3016. Definition of nonmetalliferous
For purposes of A.R.S. §§ 42-1313 and 42-1317, "nonmetalliferous" means neither yielding nor containing metal.

Historical Note
(A.R.S. §§ 42-1313, 42-1317) Adopted effective October 1, 1986 (Supp. 86-5).

R15-5-3017. Reserved

R15-5-3018. Renumbered

Historical Note
(A.R.S. § 42-1305) Adopted effective September 3, 1986 (Supp. 86-5). Renumbered to R15-5-2206 effective October 14, 1993 (Supp. 93-4).

R15-5-3019. Reserved

R15-5-3020. Reserved

R15-5-3021. Repealed

Historical Note
Adopted effective August 13, 1987 (Supp. 87-3). Repealed effective October 14, 1993 (Supp. 93-4).

R15-5-3022. Repealed

Historical Note
Adopted effective August 13, 1987 (Supp. 87-3). Repealed effective October 14, 1993 (Supp. 93-4).

R15-5-3023. Renumbered

Historical Note
(A.R.S. § 42-1302) Former Section R15-5-209 renumbered and amended as Section R15-5-3023 effective August 26, 1987 (Supp. 87-3). Section R15-5-209 renumbered as Section R15-5-3023 and amended in error, see Section R15-5-209 (Supp. 88-3).

R15-5-3024. General

A. Sale of electricity, gas, or water to a consumer, whether an industry, or group, is subject to tax under this classification.

B. Development fees and contributions-in-aid-of-construction received for utility and utility services installation pursuant to A.R.S. § 42-1307 are exempt from tax under this classification. A "development fee" is the amount paid by developers to a city for connecting a development to existing water and sewer systems. "Contributions-in-aid-of-construction" are revenues received as reimbursement from customers for whom property and equipment was installed to provide utility access.

Historical Note
(A.R.S. § 42-1307) Former Section R15-5-2102 renumbered and amended as Section R15-5-3024 (Supp. 86-6). Correction, effective date of last amendment to read: "effective December 31, 1986" (Supp. 87-3).

R15-5-3025. Renumbered

Historical Note
(A.R.S. § 42-1322.01) Adopted effective September 24, 1986 (Supp. 86-5). Renumbered to R15-5-2007 (Supp. 94-2).

R15-5-3026. Reserved

R15-5-3027. Reserved

R15-5-3028. Reserved

R15-5-3029. Reserved

R15-5-3030. Reserved

R15-5-3031. Reserved

R15-5-3032. Non-premise based telephone service

A. The amount a provider of exchange access services charges for the services is not subject to the tax levied by A.R.S. § 42-1472 if the services do not involve customer premises.

B. "Premises" means real property and any buildings, portions of buildings or appurtenances attached to the real property.

Historical Note
(A.R.S. § 42-1472) Adopted effective September 24, 1986 (Supp. 86-5)

R15-5-3033. Reserved

R15-5-3034. Reserved

R15-5-3035. Determination of taxable basis: nuclear fuel

A. The quantity of uranium oxide used in producing a nuclear fuel assembly shall be determined by calculating the total amount of uranium oxide that was required to produce the nuclear fuel assembly, without any allowance for waste or loss due to processing.

B. The average cost allocated to the total amount of uranium oxide that was required to produce the nuclear fuel assembly shall be the taxable base of the nuclear fuel assembly. For purposes of fixing the point in time at which the average costs reflected in the taxpayer's books and records shall be allocated under various circumstances, the average cost of the quantities identified in subsection (A) shall be determined as follows:

1. If uranium oxide in the form of uranium hexafluoride is delivered by the taxpayer to the United States Department of Energy for enrichment, at the end of the month in which such delivery occurs;
2. If no enrichment is undertaken, at the end of the first month in which natural uranium oxide in the form of uranium hexafluoride is delivered for fabrication; or
3. If uranium oxide is first purchased after final enrichment, at the end of the month in which the purchase occurs.

Historical Note
Adopted effective September 16, 1987 (Supp. 87-3).

R15-5-3036. Renumbered

Historical Note
Adopted effective August 7, 1987 (Supp. 87-3). Renumbered to R15-5-157 effective August 9, 1993 (Supp. 93-3).

Repealed

TITLE 15. REVENUE

CHAPTER 6. REPEALED

Former Title 15, Chapter 6 (Department of Revenue - Office of Estate Taxes, Unclaimed and Abandoned Property) repealed effective January 4, 1994 (Supp. 94-1).

TITLE 15. REVENUE

CHAPTER 7. DEPARTMENT OF REVENUE BINGO SECTION

(Authority: A.R.S. §§ 5-402, 42-105)

ARTICLE 1. REPEALED

Article 1, consisting of Section R15-7-101 and R15-7-102, repealed effective January 16, 1997 (Supp. 97-1).

ARTICLE 2. GENERAL PROVISIONS

ARTICLE 3. LICENSING PROVISIONS

ARTICLE 4. TAX PROVISIONS

ARTICLE 5. SUSPENSION; REVOCATION; APPEALS

ARTICLE 6. HEARING AND APPEAL PROCEDURES

ARTICLE 1. REPEALED

R15-7-101. Repealed

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4). Repealed effective January 16, 1997 (Supp. 97-1).

R15-7-102. Repealed

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4). Repealed effective January 16, 1997 (Supp. 97-1).

ARTICLE 2. GENERAL PROVISIONS

R15-7-201. Definitions

For the purposes of these rules, unless the context requires otherwise, the following definitions will apply:

1. "Bingo" means that specific kind of game of chance commonly known as bingo, in which prizes are awarded on the basis of a designated pattern of numbers or symbols on a card conforming to numbers or symbols selected at random.
2. "Bingo Worker" means any manager, supervisor, proceeds coordinator, or assistant who is participating in any manner in the holding, operating, or conducting of the bingo occasion.
3. "Books and records" are those documents relating to financial affairs of an organization kept in its regular course of business including check stubs, canceled checks, bank statements, deposit and withdrawal slips, journals, ledgers, receipts, invoices, winner signature sheets, verification records, game programs, and any other documents used in connection with bingo operations.
4. "Calendar week" means a block of seven calendar days, beginning at 00:00:01 Sunday, Arizona time, and ending 12:00:00 midnight Saturday.
5. "Cards" mean that card, paper or other device of bingo play, provided by the licensee to the player, which bears numbers or symbols arranged in five parallel rows within each row containing five numbered or symboled spaces with the exception of one center "free space".
6. "Day" means a 24-hour period beginning at 00:00:01 a.m. Arizona time and ending at 12:00:00 p.m. the following midnight.
7. "Department" means the Arizona Department of Revenue.
8. "Inducements" shall include, but not be limited to, giving anything of nominal value to any person at the bingo occasion other than a bingo prize, or the sale of anything of value for less than its fair market value.
9. "Player" means a person 18 years of age or older who pays the admission fee, if any, to be admitted to the premises and who personally selects, pays for, and plays one or more cards.
10. "Proprietary, equitable or credit interest" includes, but is not limited to, any arrangement by means of which a person has:
    a. A security interest or lien which is attached to any property of a licensee, or
    b. A right to sell or lease to a licensee, or
    c. A right to reacquire property sold to a licensee.
11. "Receptacle" means a container, such as a blower and cage, which holds the bingo balls or objects used in bingo games.
12. "Wild Number Bingo" means games of bingo where the first ball drawn from the receptacle is used to determine all wild numbers for a single game, and in which all wild numbers are marked on all players' bingo cards prior to any other bingo balls being called.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-202. Special bonus game (Class B and Class C licensees only)

A. One special bonus game may be held on the same respective day of each week and shall continue throughout the quarter in which the special bonus game was initiated until such time as the total amount of the prize money has reached $12,000.00 in the aggregate per quarter. All prize money offered must be given away within each quarter that the special bonus game is played. Any unused portion of the $12,000.00 limit may not be carried over into any other quarter. As licensees are allowed to conduct up to three occasions weekly, a licensee may conduct up to three special bonus programs per quarter. The special bonus game must not cause the licensee to exceed the 35 games per occasion limit set by A.R.S. § 5-401(21).

B. Licensees wishing to conduct a special bonus game shall submit the application prescribed by the licensing authority and receive written approval prior to initiating any such game. Each licensee wishing to conduct a special bonus game shall prepare a detailed written description of the program to be followed in the conduct of the special bonus game. Each special bonus game program description shall include the following:
    1. A description of the manner in which the special bonus game program shall be conducted and the total amount of prize money to be offered for that quarter.
    2. The pattern that will be required to accomplish bingo.
    3. The number of calls within which a bingo must be accomplished to allow the awarding of the prize.
    4. The amount of each designated prize.
    5. The amount of any consolation prize.
    6. The type of card to be used.
    7. The cost per card to the player.
    8. A statement of the manner to award any portion of the offered prize if it should not have been awarded by the last night of the quarter.

C. Any instance of failure to complete accurately the application or any instance of nonconformance contained in the application with existing statutes and rules shall result in the return of the entire application to the submitting licensee. The licensing authority shall return the nonconforming application with a statement containing the specific reasons for disapproval.

D. Prior to changing or cancelling any special bonus game program, the licensee must receive written approval from the licensing authority. Each special bonus game may follow a different program. A change of program may take place only at the beginning of a quarter. The cancellation of the special bonus game may take place at any time during the quarter once written approval is received from the licensing authority. However, once the special bonus game is cancelled during a quarter, it may not be resumed until the beginning of the next quarter and upon approval from the licensing authority.

E. Approval to conduct special bonus games shall expire at the end of each licensing period. Therefore, licensees must reap-

ply for approval to conduct special bonus games at the end of each licensing period.

F. The approval to hold special bonus games shall be conspicuously displayed at the place where the games of bingo are to be conducted at all times during any game.

Historical Note
Adopted effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-203. Repealed.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Repealed effective December 22, 1989 (Supp. 89-4).

R15-7-204. Affidavits

A. Affidavits shall be in the sworn and notarized form prescribed by the licensing authority.

B. The membership requirements to participate in the conduct of games shall be continuous and fulfilled immediately prior to submission of an affidavit.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-205. Reserved

R15-7-206. Monitoring by bingo workers

It shall be the responsibility of the licensee and those persons physically conducting the bingo occasion to prohibit any unauthorized person from participating in any manner in the conducting of any bingo game.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-207. Pre-game verification

A. Prior to commencement of each bingo occasion, the supervisor for that occasion shall verify that all equipment used in the conducting of bingo is in sound working condition. The supervisor shall further verify that the utilization of such equipment and the methods of play are such that each player is afforded an equal opportunity to win.

B. Prior to each occasion the supervisor for that occasion shall, in the presence of one or more bingo players, verify that all bingo balls are present and that there are no numerical duplications.

C. All defective bingo balls shall be replaced immediately regardless of the time of discovery.

D. An authorized representative of the licensing authority may order that any defective equipment be repaired or replaced.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-208. Conduct of game - official scorer

A. The bingo balls which are placed on the master board are the official scorer for bingo occasions. A lighted number display board is not an official scorer.

B. Wild number bingo balls need not be pulled from the receptacle or placed on the master board in order to be recognized as being valid bingo balls called.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-209. Method of call, announcement of "bingo" by player

A. Once the person calling the bingo balls has initiated the call, that call shall be completed. The call is considered initiated when the person calling the bingo balls begins to vocally announce the letter designation on the bingo ball.

B. The person calling the bingo balls shall allow a reasonable length of time for a player to announce "bingo" before proceeding with the next call.

C. The person calling the bingo balls shall not remove more than one bingo ball at any time from the receptacle.

D. No player shall be declared a winner of a bingo game, nor shall any player be awarded a prize therefore, unless said player has accomplished "bingo" on the last immediately announced number and has announced said fact to a bingo worker prior to initiation of the next call.

E. The machine may be turned off during a game only if the next bingo ball can be secured so that it does not fall into the receptacle. This ball shall be the next announced number unless a valid bingo has been declared on the prior number announced.

Historical Note
Adopted effective June 5, 1984. Amended effective June 20, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-210. Multiple winners

Whenever it is necessary to share a designated prize because there were multiple winners on the last immediately called number, the following rules shall govern:

1. In the event that the designated prize consists of cash, the total amount of the prize shall be divided equally between the verified winners. However, the licensee shall have the option of rounding fractional dollars to the next higher dollar.
2. When the designated prize consists of an item other than cash and the designated prize cannot be divided, the bingo licensee shall award substitute merchandise prizes to each verified winner. All substitute merchandise prizes shall, as closely as possible, be of equal value, but not to exceed, in the aggregate, the value of the original prize.
3. Subject to the preceding provisions, a licensee may establish minimum prizes.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-211. Declaration of a game completion: award of prize

A. When a winner of a bingo game is determined, the person calling the bingo balls shall announce the existence of a winner and ask if there are other winners. After the verification of each bingo, all other players shall also have the opportunity to claim bingo on the same call. If no other players claim bingo, the person calling the bingo balls shall declare the game completed. The designated prize shall then be awarded. Multiple winners shall share prizes in accordance with R15-7-210.

B. No player shall be allowed to receive or share the designated prize unless the player has accomplished "bingo" and has announced this fact before the person calling the bingo balls declares that the game has been completed.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-212. Erroneous calls

A. If it is determined by any person during a bingo game that the person calling the bingo balls has made an error in calling the

number on a bingo ball or in announcing the number of bingo balls called, the error shall be immediately corrected before proceeding with the game. An error in calling the number on the bingo ball or in announcing the number of bingo balls called shall not be corrected after the game has been closed in accordance with R15-7-211.

B. If, as the result of correcting the error, it is found that a player would have accomplished "bingo" on the correct number or another number already called, the game prize shall be awarded to the winning players as if the correct number had been the last number called.

C. If a player has accomplished "bingo" as a result of an erroneously called number, the bingo shall be declared invalid. No prize shall be awarded based on an erroneous call.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-213. Verification of winning cards

A. At the time a bingo is called by any player, a bingo worker shall verify the numbers on the winning card in the presence of a disinterested player. The bingo worker shall call the numbers of the winning combination of all bingo patterns except the cover-all. For the cover-all pattern, the bingo worker may call all of the numbers not called during play of the game.

B. There shall be no more than one winning pattern verified per bingo card per game.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-214. Arizona State Lottery tickets

The sale of tickets or other chances to participate in the Arizona State Lottery and the giving of such tickets or chances as bingo prizes shall not be deemed by the licensing authority to be the conducting of a lottery by a licensee.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3).

R15-7-215. Sale of players' cards

A. All sales of bingo cards shall take place on the premises where the games of bingo are to be played and no earlier than four hours prior to the start of the first game.

B. Players must purchase their own cards. Players shall not sell or otherwise transfer bingo cards which they have purchased to any other player.

C. Cards shall not be reserved in advance for or by players.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-216. Duplicate cards

A. Duplicate cards are prohibited.

B. If there are multiple winners in a single game and it is determined that the winners have duplicate cards, licensees shall forward the duplicate cards, along with a written description of the reason why it occurred, to the bingo licensing authority within one week from the date of occurrence.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Amended Subsection B. effective December 22, 1989 (Supp. 89-4).

R15-7-217. Same-day requirements for play, winners and prizes

A bingo occasion shall be completely played during one day. All cards shall be purchased by the players, all winners determined and all prizes awarded within the same day.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-218. Notice of charges

A. The bingo licensee shall, prior to the sale of cards for any bingo occasion, post a notice in a conspicuous place on the premises where bingo is to be played listing the charges for admission, cards, papers or other media of play and any other service or privilege offered. A licensee shall charge the publicly posted rates.

B. A licensee shall charge players non-discriminatorily for all cards and shall neither give, donate, nor distribute to players, directly or indirectly, any "free" cards. No card may be taken to the playing area until paid for.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-219. Notice of prizes

A. Prior to the sale of cards for any bingo occasion, the bingo licensee shall post a notice in a conspicuous place on the premises where the bingo is to be played describing the nature and exact amount of prizes to be awarded including the method of determining substitute prizes to be awarded in the event of multiple winners.

B. Notwithstanding the foregoing, if a licensee conducts a "split-the-pot" or "winner-take-all" special game, the amount of the minimum prizes to be awarded shall be announced prior to the calling of the first number. The actual amount of the prize shall be announced prior to the closure of the game.

C. For the purposes of this rule, it shall be sufficient for the licensee to state in the posted notice that, in the event of multiple winners, the stated prize will be divided equally, insofar as possible, between or among the verified winners subject to the prize provisions of these rules.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-220. Alternate prizes for winners within specified number of calls

A. Within the dollar limits prescribed by A.R.S. § 5-406(P), alternate prizes may be offered based upon the number of calls within which a successful bingo is achieved. If a licensee avails itself of the provisions of this rule, it must announce to the players at the beginning of each game in which the option is exercised, the number of calls within which the bingo must be accomplished and the type or amount of the alternate prizes to be awarded.

B. In every bingo game offering alternate prizes for winners within a specified number of calls, a disinterested player shall verify the number of balls called before any prize is awarded.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Amended Subsection A effective December 22, 1989 (Supp. 89-4).

R15-7-221. Availability of rules and statutes for players

The licensee shall have in its possession, on the premises where bingo games are being played, a copy of these rules and the applicable statutes available for inspection by any player upon request. A notice to this effect shall be posted in a prominent place on the premises.

Historical Note

Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-222. Inducements

A. Licensees that choose to give inducements shall submit in writing to the licensing authority a statement describing the inducement which shall be offered and setting forth the actual and discounted prices. The value of the inducement shall be the difference between the fair market value and the discounted price. The aggregate value of the inducements shall not exceed $50.00 per occasion.

B. If licensees wish to offer a door prize as their form of inducement, the manner in which the winner of the door prize is determined shall not violate lottery and raffle prohibitions under A.R.S. § 5-406(X).

Historical Note

Adopted effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-223. Minors prohibited from play

No bingo card shall be sold or bingo prize awarded to any person under 18 years of age.

Historical Note

Adopted effective June 5, 1984 (Supp. 84-3).

R15-7-224. Repealed

Historical Note

Adopted effective June 5, 1984 (Supp. 84-3). Repealed effective December 22, 1989 (Supp. 89-4).

R15-7-225. Verification of gross receipts

Licensees shall be responsible for maintaining an accurate account of the gross receipts from each occasion. To accomplish this, the licensee shall maintain an accurate account of all bingo cards and supplies purchased and sold. The following method shall be used to accomplish the above:

1. Licensees shall obtain an invoice for all bingo supplies purchased by them for resale to bingo patrons. These invoices shall become a part of the licensees' books and records.
2. The supervisor for the occasion shall ensure that the verification report form prescribed by the licensing authority is accurate and complete when submitted.

Historical Note

Adopted effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-226. Legal debts

All expenses of games of bingo must be paid when due. No legal debt of a game of bingo may be forgiven except as allowed through bankruptcy proceedings.

Historical Note

Adopted effective June 5, 1984 (Supp. 84-3).

R15-7-227. Repealed

Historical Note

Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Repealed effective December 22, 1989 (Supp. 89-4).

R15-7-228. Conditions of deducting mortgage payments

A. A licensee, if it is a nonprofit charitable organization, may deduct mortgage payments from gross receipts for only one premises based upon a reasonable and bona fide participation in ownership. When there are multiple owners conducting games in the same premises, the mortgage payment deduction shall be prorated among the owners, based on the use of the premises.

B. A licensee may deduct statutorily allowable mortgage payments from bingo gross proceeds only if all four of the following conditions are met:

1. The licensee is a nonprofit charitable organization;
2. The premises are used primarily for the furtherance of the licensee's bona fide charitable purposes;
3. The premises are the place where bingo occasions are held; and
4. The licensee does not derive rental income from the premises.

C. If no mortgage exists, taxes and insurance are considered ongoing expenses of the organization and may not be paid from bingo gross proceeds. They may be paid from bingo net proceeds.

D. All purchases of premises by licensees, in which bingo is intended to be conducted, shall be bona fide purchases made for a commercially reasonable purchase price. Should the licensing authority question the reasonableness of the purchase price, an appraisal shall be done by the Property and Special Taxes Division of the Department of Revenue. The licensee may obtain and submit an independent appraisal by a certified appraiser to be considered in conjunction with the Departmental appraisal.

Historical Note

Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-229. Repealed

Historical Note

Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Repealed effective December 22, 1989 (Supp. 89-4).

R15-7-230. Reporting responsibility

A. Financial reports are due even though no bingo occasions were held during the reporting periods. Reports may be filed in advance if it is known that no bingo occasions will be held and no bingo funds will be expended.

B. All interest accrued on the licensee's special checking account or additional interest-bearing accounts shall be reported as gross receipts during the reporting period in which the interest is received. The interest shall be considered received when the licensee receives the account statement reflecting interest paid to the account.

C. Financial reports which are filed in person shall be considered delinquent if received by the Department after the due date. If a report is received after the due date, it is considered timely only if postmarked on or before the due date. When a due date falls on Saturday, Sunday, or a legal holiday, the due date for filing shall be the business day following such Saturday, Sunday, or holiday.

Historical Note

Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-231. Financial report supplement
A list of the names and addresses of each person to whom $300.00 or more in the aggregate has been paid during any bingo occasion and the purposes of such expenditures shall be submitted by all licensees with the required financial report.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-232. Bingo accounts
A. The licensee shall have only one checking account for bingo purposes. All bingo proceeds, except amounts paid out as small prizes, shall be deposited in the bingo checking account. The licensee shall maintain in the bingo checking account an amount sufficient to cover all checks written. A licensee shall not stop payment on any prize check without first notifying the licensing authority.
B. Expenditures for equipment and supplies used in the daily operation of the organization in the furtherance of its purposes, including expenditures for improvements and additions to the building or premises which the organization uses for its bona fide purposes, may be paid from the bingo checking account out of bingo net proceeds.
C. The licensee may establish additional interest-bearing accounts. Each of the additional interest-bearing accounts shall be a federally insured account in which interest rates exist. Interest-bearing account funds shall only be directly transferable into the bingo checking account.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-233. Persons permitted to conduct games; compensation allowed
A. A member or new member of a parent organization may work at a bingo occasion held by the parent organization's auxiliary. A member or new member of an auxiliary organization may work at a bingo occasion held by the auxiliary's parent organization.
B. A member or new member of either the parent or auxiliary organization shall not be paid or receive a commission, salary or compensation for rendering any services related to bingo except as provided in A.R.S. § 5-407(G)(9). Discount dinners or other functions conducted specifically for bingo workers are considered compensation.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-234. Informal resolution after investigation or complaint
A. If as the result of an investigation by the licensing authority, either routinely or upon complaint, the licensing authority finds that an error or violation of a rule or statutory provision has occurred, the licensing authority personnel shall direct the licensee to rectify the error or violation and discontinue any practice causing such error or violation. Written confirmation of such order shall be sent to the licensee and, when applicable, to the complainant by certified mail.
B. If the licensee disagrees with a directive by the licensing authority made during an investigation, the licensee may request an informal meeting with the licensing authority supervisory personnel. Written notice of the licensing authority's ultimate decision shall be sent to the licensee by certified mail.
C. If the licensee fails to comply with a directive of the licensing authority, the licensing authority shall consider instituting suspension or revocation procedures. The licensee will have the rights of hearing and appeal as set forth in Article 6 of this Chapter.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

ARTICLE 3. LICENSING PROVISIONS

R15-7-301. Requirements of exempt organizations
A. An applicant's allegation of tax-exempt status under the Internal Revenue Code or Arizona Revised Statutes is not determinative of qualification as a "qualified organization".
B. If the applicant organization claims to be exempt from Arizona State income tax, the applicant shall provide the licensing authority with:
1. Copies of documents from the Arizona Department of Revenue documenting the applicant's exemption for State income tax purposes.
2. Proof the applicant is part of any other organization which has a State income tax exemption.

C. If the applicant claims to be exempt under § 501(c) of the Internal Revenue Code of 1986, as amended, the applicant shall provide the licensing authority with:
1. Copies of documents from the Internal Revenue Service stating the applicant's exemption for Federal income tax purposes.
2. Proof the applicant is part of an organization which receives a national exemption.

D. Tax-exempt status under the Internal Revenue Code or Arizona Revised Statutes is not the sole determinant of a "qualified organization" for bingo licensing purposes.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-302. Change in ownership (Class A license only)
A. When a Class A license is issued to a person other than a natural person, any change in ownership of the licensee nullifies the existing license.
B. When a Class A license is issued to a person other than a natural person, a new license is not required if the licensee merely changes the designated bingo manager, supervisor or proceeds coordinator.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-303. Change of name
When a change is made in a name under which a bingo license is operating, even though the ownership remains the same, the licensee shall notify the Department in writing of any such change.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-304. Changes to the license, approval required
Except with the prior written consent of the licensing authority, bingo occasions shall be conducted only on the days, at times, and by persons, stated on the license. Every amendment to a license shall be conspicuously displayed on the premises where bingo occasions are being conducted at all times during the occasion.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-305. Change of mailing address
A licensee shall immediately notify the Department in writing of any change in mailing address. The licensee shall specify that the change of address is for mailing purposes only.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3).

R15-7-306. Termination of license
Upon termination of bingo operations, the license shall be surrendered to the Department accompanied by a written statement giving the date of operation termination. The surrender of the license shall not be effective until the Department accepts the surrender in writing. The Department may withhold its consent to the surrender if the licensee is being investigated or if suspension or revocation procedures are pending.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-307. Cancellation of occasion, approval required
A bingo occasion shall be cancelled only after written notice to and approval from the licensing authority. In case of an emergency, the licensing authority shall be notified promptly in writing of the cancellation and the reason therefore. This rule applies to licensees conducting games on seasonal basis.

Historical Note
Adopted effective April 25, 1986 (Supp. 86-2). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-308. Initial License Application Time-frames

A. For an initial license, the overall time-frame described in A.R.S. § 41-1072(2) is 60 calendar days.

B. For an initial license, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is 30 calendar days and begins on the date the Department receives the license application package required by A.R.S. §§ 5-403(B) and 5-404.
1. The Department shall notify the applicant if the package is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant, the license application package shall be deemed complete at the end of the administrative completeness review time-frame.
2. An applicant with an incomplete license application package shall supply the missing information within 30 calendar days from the date of the notice. The 30-calendar-day time-frame for the Department to finish the administrative review is suspended from the date the Department notifies the applicant of missing information until the date the Department receives the information.
3. If an applicant fails to submit a complete license application package within 30 calendar days from the notice, the Department shall close the file. An applicant whose file has been closed and who later wishes to obtain a license shall submit a new application.

C. For an initial license, the substantive review time-frame described in A.R.S. § 41-1072(3) is 30 calendar days and begins at the end of the administrative completeness review time-frame.
1. As part of the substantive review, the Department may schedule a visit to the premises.
2. At the end of the substantive review time-frame, the Department shall issue a license if the applicant and the premises meet the requirements of A.R.S. § 5-401, *et seq.* and these rules, or a written notice of denial if the applicant or the premises do not meet requirements of A.R.S. § 5-401 *et seq.* and these rules.

D. For the purposes of this Section, if the last day of the time-frame falls on a Saturday, Sunday, or legal holiday, the time-frame shall end on the next calendar day which is not a Saturday, Sunday, or legal holiday.

Historical Note
Adopted effective November 19, 1997 (Supp. 97-4).

ARTICLE 4. TAX PROVISIONS

R15-7-401. Financial report form
If the prescribed financial report form is not in the possession of the licensee in time for the licensee to file a report on time, the licensee shall submit its report on a plain sheet of paper.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22. 1989 (Supp. 89-4).

R15-7-402. Excess payments
When, upon examination of the financial report, it is determined that an amount of tax has been paid in excess of the tax lawfully due, the Department shall issue a credit against the tax liability of future periods or refund the excess payment.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22. 1989 (Supp. 89-4).

R15-7-403. Payment under protest
A licensee shall make payment of any tax, penalty or interest under protest by submitting the protest in writing. Protests shall be pursued in accordance with the provisions of Chapter 10, Article 1 of this Title.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-404. Repealed

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Repealed effective December 22, 1989 (Supp. 89-4).

R15-7-405. Deficiencies; payment; appeal

A. When the Department determines that an additional amount of tax is due, the Department shall issue an assessment for the additional amount due. Each assessment shall show the taxable income for the period of the audit, the tax which should have been paid, the amount of tax actually paid, and the additional tax due on the assessment.

B. In the event a licensee fails to make a report, the Department shall proceed to obtain facts upon which to base an assessment. The Department may issue a subpoena requiring the licensee, its employees, and its agents to testify under oath.

C. A licensee may, within 30 days of receipt of an additional assessment or tax determination, deliver to the Department a written request for a hearing for the purpose of modifying or vacating the Department's assessment. Such request shall specify the licensee's objections to the determinations of the Department. Appeals of deficiency assessments shall be pursued in accordance with the provisions of Chapter 10 of this Title.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3).

ARTICLE 5. SUSPENSION; REVOCATION; APPEALS

R15-7-501. Suspension or revocation of license
The Department may suspend or revoke a bingo license for any violation of Title 5, Chapter 4, Arizona Revised Statutes, or any violation of the rules in this chapter.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-502. Suspension of license and right of appeal
All notices of suspension shall be given pursuant to A.R.S. §§ 41-1061 and 41-1064 and these rules. The written suspension notice shall be sent via certified mail. All notices shall state the grounds for suspension, the duration of the suspension and shall further state either:

1. That the suspension shall take effect only after public hearing. The licensee may, within ten days after the mailing of the notice of suspension, request the modification or vacation of the notice of suspension. Such request shall set forth with particularity the licensee's objections to the notice of suspension; or
2. That summary suspension is necessary for the public health, safety or welfare and that summary suspension of a license has been ordered pending proceedings for revocation or other action. Notice of summary suspension may be given orally or in writing. If given orally, a written confirmation of notice shall be transmitted within three workdays. In the case of summary suspension, the public hearing shall be held within ten days of the date of the written notice of suspension.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-503. Revocation of license and right of appeal
A licensee shall be notified in writing, pursuant to A.R.S. §§ 41-1061 and 41-1064, of a revocation of its bingo license. The notice of revocation shall specify the grounds for such revocation. The licensee may, within ten days after the mailing of the notice, request the modification or vacation of the notice of revocation. Such request shall set forth with particularity the licensee's objections to the notice of revocation.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-504. Injunction against continued conducting of games after suspension or revocation
In the event the licensee continues with bingo games after suspension or revocation, the Department shall request that the Attorney General's Office initiate legal action to prevent any licensee from continuing to conduct bingo games.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

ARTICLE 6. HEARING AND APPEAL PROCEDURES

R15-7-601. Reserved

R15-7-602. Proper parties
The licensing authority and the licensee shall be the parties to any hearing involving bingo licensing, license suspension, or license revocation. The manager, if any, shall represent the licensee at all hearings.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-603. Form of objection
All objections to the licensing authority's actions or proposed actions shall be by petition. The petition shall be legible and state the following information:

1. The name, address, and phone number of the licensee and the licensee's manager;
2. A description of the action by, and a copy of the notice from, the licensing authority, if any;
3. Statement of errors alleged with particularity to have been committed by the licensing authority in the determination of the action;
4. Statement of facts upon which licensee relies to support the assignment of errors alleged to have been committed by the licensing authority;
5. Relief sought; and
6. Whether an oral hearing is requested.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-604. Manner of filing

A. A petition filed in opposition to an action or a proposed action by the licensing authority and any supporting memoranda shall be filed in duplicate with the licensing authority's Hearing Office in Phoenix, Arizona.

B. No fee shall be charged for the filing of any petition or supporting memoranda.

C. Upon receipt of a petition, the licensing authority's Hearing Office shall record the filing of the petition in the docket book and assign a case number. A copy of the petition and any supporting memoranda shall then be transmitted to the licensing authority.

D. A fee will not be charged for the filing of any document.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-605. Reserved

R15-7-606. Supplementation of petition
If a petition is timely filed but incomplete, the Hearing Officer may grant the licensee an additional period of time, not to exceed 15 days, within which to supplement the petition. A supplement to the petition shall be excluded if it is not filed within the additional time period which was granted.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-607. Memoranda

A. Unless a license has been summarily suspended under A.R.S. § 5-402(1), a licensee may file memoranda in duplicate no less than ten days before hearing. The Hearing Officer shall immediately transmit a copy of any memoranda filed to the licensing authority which shall then have five days from its date of receipt by the licensing authority to file a response.

B. A memorandum filed by mail shall be considered filed on the date shown on its postmark.

C. The Hearing Officer shall permit memoranda to be filed at any time prior to hearing when a license has been summarily suspended.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-608. Withdrawal of petition

A. Prior to the issuance of a final decision by the Department, the petition may be withdrawn at the written request of the licensee.

B. When the petition is withdrawn, the licensing authority's action or proposed action shall be deemed final and shall not be subject to any further review.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-609. Rescheduling of hearing

The hearing may be postponed or recessed for good cause shown, at the Hearing Officer's discretion, upon the written or oral request of the licensee or the licensing authority. Hearings shall be continued to a specified date, time and place.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-610. Hearing before Hearing Officer

The Hearing Officer designated by the Director of the Department shall preside at the hearing.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3).

R15-7-611. Repealed

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Repealed effective December 22, 1989 (Supp. 89-4).

R15-7-612. Repealed

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Repealed effective December 22, 1989 (Supp. 89-4).

R15-7-613. Stipulation of facts

The licensee and the licensing authority may file a joint stipulation stating the facts upon which they agree, the facts which are in dispute and the reasons for the dispute. The Hearing Officer may require the parties to file such a stipulation. The stipulation may be filed at any time prior to the date of hearing unless otherwise ordered by the Hearing Officer.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-614. Evidence

A. Oral evidence shall be taken only on oath or affirmation.

B. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, impeach any witness regardless of which party first called the witness to testify, and rebut the evidence against it. A party or its employees, agents or officers may be called by the opposing party and examined as if under cross-examination. The Hearing Officer may examine a party or any person who is present.

C. The Hearing Officer shall be liberal in admitting evidence, but objections to the admission of and comments on the weakness of evidence shall be considered in assigning weight to the evidence. The Hearing Officer may deny admission of evidence which is considered irrelevant, untrustworthy or unduly repetitious.

D. Legible copies may, upon a showing of proper foundation, be admitted into evidence or substituted in place of the original documents.

E. The original records and files of the Department shall not be removed from its office for use as evidence or for other purposes.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-615. Official notice

A. The Hearing Officer may take official notice of the following as an admission of fact in the case.
1. The records maintained by the Department.
2. Applications, reports, and returns of whatever nature, filed with the Department for or on behalf of the licensee or any auxiliary, or for or on behalf of any lessor, lessee, grantor, grantee, or similar contractor of the licensee.
3. Any fact which may be judicially noticed by the courts of the state.

B. The parties may, at the hearing, contest any matters thus noticed.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-616. Subpoena; deposition

A. The Hearing Officer may, upon request or on the Hearing Officer's own initiative, cause to be issued subpoenas for the attendance of witnesses or for the production of books, records, documents and other evidence, and shall have the power to administer oaths. A subpoena requested by a party shall be served on behalf of and at the expense of the party requesting its issuance.

B. Any subpoena so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

C. Upon written application the Hearing Officer may permit a deposition to be taken, in the manner and upon the terms designated by the Hearing Officer, of a witness who cannot be subpoenaed or who is unable to attend the hearing.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-617. Reserved

R15-7-618. Hearing procedures

A. The burden of proof shall be upon the licensee as to all issues of fact except in any proceeding for suspension or revocation of a license.

B. Each party to the proceeding shall have the right to be represented by counsel, to submit evidence at the hearing and to cross-examine witnesses.

C. The Hearing Officer may conduct the hearing in an informal manner.

D. If the Hearing Officer desires the submission of posthearing memoranda or information, the Hearing Officer shall direct the parties to comply within a reasonable period of time not to exceed 30 days.

Historical Note
Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-619. Transcripts and records

A. All oral proceedings will be transcribed by a recording device and the recorded tapes will be maintained in the office of the Department. A copy of the tapes will be furnished at no cost to a party requesting the tapes.

B. A request that the hearing be transcribed manually shall be made in writing to the Hearing Office at least five days in advance of the hearing. Such transcript shall be prepared at the expense of the requesting party unless otherwise provided by law.

C. Certified copies of records which the licensing authority is permitted by law to divulge shall be furnished to licensees upon written request. When certified copies of paper or records are requested, a reasonable charge shall be made.

Historical Note

Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-620. Decisions and orders

A. If the licensing authority and the licensee agree as to the resolution of a matter prior to the hearing, it shall be so stipulated in writing and submitted to the Hearing Officer; the petition shall be deemed withdrawn and the proposed action shall be adjusted accordingly. In that case, the Director of the Department shall issue an order of resolution and copies of the order shall be forwarded to the licensee and the licensing authority.

B. The Hearing Officer shall issue a proposed decision or order after reviewing the evidence.

C. All proposed decisions and orders of the Hearing Officer shall be in writing and shall include findings of fact and conclusions of law separately stated.

D. Notice of the proposed decisions or proposed order of the Hearing Officer shall be mailed to the licensee, return receipt requested. A copy of the proposed decision or proposed order shall be immediately forwarded to the licensing authority.

Historical Note

Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-621. Objections to proposed decision or order of Hearing Officer; request for rehearing

A. The licensing authority or the licensee may file objections to the proposed decision or order of the Hearing Officer in the form of a petition setting forth the specific reasons for the objections, within 15 days after the objecting party receives notice of the proposed decision or order. Either party may request a rehearing at the time it files its objections to the proposed decision or order.

B. At the expiration of the 15-day petitioning period, or after the rehearing if the request for rehearing is granted, the proposed decision or order of the Hearing Officer shall be forwarded to the Director of the Department, together with all petitions filed in opposition to the proposed decision or order.

C. The Director of the Department may adopt the proposed decision or order of the Hearing Officer as the Final Order of the Department or may prepare a Director's decision.

D. If the Director of the Department adopts the proposed decision or order of the Hearing Officer, it shall be issued as the Final Order of the Department.

E. If the Director of the Department prepares a Director's decision, it shall be issued as the Final Order of the Department.

Historical Note

Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

R15-7-622. Appeal to Superior Court

The licensee may appeal to the superior court a Final Order of the Department, only after exhaustion of all administrative remedies, under the provisions of Title 12, Chapter 7, Article 6, Arizona Revised Statues.

Historical Note

Adopted effective June 5, 1984 (Supp. 84-3). Amended effective December 22, 1989 (Supp. 89-4).

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE - GENERAL ADMINISTRATION

(Authority: A.R.S. § 42-105)

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Article 3, consisting of Sections R15-10-301 through R15-10-307, adopted effective July 30, 1993 (Supp. 93-3).

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R15-10-302. General Requirements
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ARTICLE 4. REIMBURSEMENT OF FEES AND OTHER COSTS RELATED TO AN ADMINISTRATIVE PROCEEDING

Article 4, consisting of Sections R15-10-401 through R15-10-404, adopted effective March 13, 1998 (Supp. 98-1).

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ARTICLE 1. HEARING PROCEDURES

R15-10-101. Definitions

For purposes of this Article:

1. "ALJ" means an administrative law judge who issues decisions on behalf of the Office of Administrative Hearings established by A.R.S. § 41-1092.01.
2. "Day" means a calendar day. If the last day for filing a document under the provisions of this Article falls on a Saturday, Sunday, or legal holiday, the document is considered timely if filed on the following business day.
3. "Department" means the Arizona Department of Revenue as represented by personnel of the applicable section or area.
4. "Notice" means a written notification, issued by the Department, of a tax assessment, refund denial, or any other action taken or proposed to be taken that is subject to appeal as a contested case or an appealable agency action under A.R.S Title 41, Chapter 6.
5. "Petition" means a written request for hearing, correction, or redetermination, including all applicable attachments.
6. "Petitioner" means the taxpayer or the representative of the taxpayer who files a petition.
7. "Refund denial" means a taxpayer's claim for a refund of tax, penalty, interest, or refundable credit that has been denied by the Department.
8. "Tax assessment" means any tax issue whether associated with a proposed amount due or the application of penalties and interest.

Historical Note
Adopted effective June 22, 1981 (Supp. 81-3). Section repealed, new Section adopted effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-102. Scope of Article 1

A Department hearing officer shall conduct all hearings regarding taxes administered by the Department under A.R.S. § 42-111, unless A.R.S. § 41-1092.02 requires that an ALJ hear the matter.

Historical Note
Adopted effective June 22, 1981 (Supp. 81-3). Section repealed, new Section adopted effective December 23, 1993 (Supp. 93-4). Section repealed, new Section adopted effective January 20, 1998 (Supp. 98-1).

R15-10-103. Taxpayer Hearing Rights

With respect to a protest hearing, the taxpayer has the right, subject to confidentiality laws, to:

1. Review documents applicable to the protest, or
2. Obtain from the Department copies of documents relevant to the taxpayer at the discretion of the Hearing Officer.

Historical Note
Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-103 renumbered to R15-10-105, new Section R15-10-103 adopted effective December 23, 1993 (Supp. 93-4).

R15-10-104. Repealed

Historical Note
Adopted effective June 22, 1981 (Supp. 81-3). Repealed effective December 23, 1993 (Supp. 93-4).

R15-10-105. Petition

A. The petitioner shall mail the petition to the applicable section at the Department of Revenue headquarters in Phoenix, Arizona or hand-deliver the petition to the License and Registration Section in any Department of Revenue office. A petitioner that hand-delivers a petition shall clearly mark the envelope to indicate that it is a petition. The License and Registration Section shall provide a receipt to a petitioner that hand delivers a petition. The Department shall not charge a fee for filing a petition or any supporting documents.
1. The petitioner shall sign the petition.
2. The petitioner shall file the original and 1 copy of the petition.

B. A petition regarding a tax assessment or a refund denial shall include the following:
1. The taxpayer's name, address, federal identification number, and all applicable state identification numbers. If there is a difference between the taxpayer's name in the notice and the taxpayer's name in the petition, the petition shall contain an explanation of the difference. A petition that concerns a married-filing-joint return shall include the last known name and address of both individuals;
2. A copy of the notice or a statement that references the tax type and the tax period involved and contains the amount of the tax assessment or refund claimed including tax, penalties, interest, and refundable credits;
3. A statement of the amount of the tax assessment or refund denial that is protested;
4. A statement of errors alleged to have been committed by the Department in the determination of the tax assessment or refund denial that is protested;
5. A statement of facts and legal arguments upon which the taxpayer relies to support the statement of errors;
6. The relief sought;
7. Whether an oral hearing is requested; and
8. The payment for all unprotested amounts of tax, interest, and penalties.

C. A petition regarding matters other than a tax assessment or a refund denial shall include the following:
1. The taxpayer's name, address, federal identification number, and all applicable state identification numbers. If there is a difference between the taxpayer's name in the notice and the taxpayer's name in the petition, the petition shall contain an explanation of the difference;
2. A copy of the notice or a statement describing the action, proposed action or determination for which a hearing is sought;
3. A statement of errors alleged to have been committed by the Department in its action;
4. A statement of facts and legal arguments upon which the taxpayer relies to support the statement of errors;
5. The relief sought; and
6. Whether an oral hearing is requested.

Historical Note
Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-105 renumbered to R15-10-107, new Section R15-10-105 renumbered from R15-10-103 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-106. Incomplete Petition

The Hearing Officer may dismiss a petition for a formal hearing which does not contain all the required information, unless the petition is made complete within the time allowed to file a petition, including any extension. An extension of time to complete the petition, not to exceed 30 days from the date notification is made, may be granted at the discretion of the Hearing Officer or on stipulation of the parties.

Historical Note
Adopted effective June 22, 1981 (Supp. 81-3). Section repealed, new Section adopted effective December 23, 1993 (Supp. 93-4).

R15-10-107. Timeliness of Petition

A. A petition regarding taxes other than individual income tax is timely filed with the Department if it is filed as prescribed by R15-10-105(A) within 45 days after the taxpayer receives the tax assessment or refund denial from the Department.

B. A petition for an individual income tax assessment or refund denial is timely filed with the Department if it is filed as prescribed by R15-10-105(A) within 90 days after the Department mails a notice to the taxpayer.

C. A petition or an extension request filed by mail is considered filed on the date shown by its U.S. Postal Service postmark.

D. A taxpayer or the taxpayer's representative may request that the Hearing Office grant an extension of time to file a petition.
1. The taxpayer or the taxpayer's representative shall submit an extension request before the expiration of the time allowed for filing the petition in subsection (A) or subsection (B). The request shall be in writing and shall show good cause for the extension. The Department may grant additional time not to exceed 60 days at the discretion of the Hearing Office or on stipulation of the parties.
2. If the Hearing Office does not grant the request for an extension in writing, the petition is due on the date specified in subsection (A) or subsection (B).

E. The Hearing Office shall dismiss a petition which the Hearing Office determines is not timely filed.

F. If the taxpayer does not file a petition protesting a deficiency assessment within the time prescribed, the taxpayer may, after paying the tax assessment in full, apply for a refund pursuant to statutory provisions.

Historical Note
Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-107 renumbered to R15-10-109, new Section R15-10-107 renumbered from R15-10-105 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-108. Amendments and Supplements

A. A petition may be supplemented or amended at any time before the conclusion of the hearing.

B. The Hearing Officer may require amendments to the petition to be in writing.

C. The Hearing Officer shall grant reasonable time for any party to submit supplements or amendments and to enable the opposing party to respond.

Historical Note
Adopted effective June 22, 1981 (Supp. 81-3). Former

Section R15-10-108 renumbered to R15-10-110, new Section R15-10-108 adopted effective December 23, 1993 (Supp. 93-4).

R15-10-109. Memoranda

A. Any party to the hearing may file a written memorandum, which further explains the facts or the application of the law to the facts, at any time before the conclusion of the hearing.

B. Any party to the hearing may submit a post-hearing memorandum at the discretion of the Hearing Officer or at the request of the Hearing Officer.

C. Post-hearing memoranda shall be submitted within a reasonable period of time, as agreed to by the parties or as determined by the Hearing Officer.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-109 renumbered to R15-10-115, new Section R15-10-109 renumbered from R15-10-107 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-110. Withdrawal of Petition

A. A petition may be withdrawn, at the written request of the taxpayer, any time prior to the issuance of a decision by the Hearing Officer.

B. If the Department and the petitioner resolve the matters protested prior to a hearing, a written agreement shall be submitted to the Hearing Officer and the protest shall be deemed withdrawn.

C. The Hearing Officer shall issue an order that the petition is withdrawn and that the determination of the Department is final.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-110 repealed, new Section R15-10-110 renumbered from R15-10-108 and amended effective December 23, 1993 (Supp. 93-4).

R15-10-111. Repealed

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Section repealed effective December 23, 1993 (Supp. 93-4).

R15-10-112. Renumbered

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-112 renumbered to R15-10-116 effective December 23, 1993 (Supp. 93-4).

R15-10-113. Renumbered

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-113 renumbered to R15-10-119 effective December 23, 1993 (Supp. 93-4).

R15-10-114. Renumbered

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-114 renumbered to R15-10-117 effective December 23, 1993 (Supp. 93-4).

R15-10-115. Request for Hearings; Waiver

A. An oral hearing shall be set if requested by the petitioner or the Department. If no request is submitted, the petition shall be considered submitted to the Hearing Officer for decision based on the petition and any memoranda filed.

B. The Hearing Officer may, for good cause shown, postpone, recess, or continue a hearing to a specified date, time, and place. The Hearing Officer shall notify all parties regarding a rescheduled hearing.

C. If no postponement has been obtained and any party to the hearing fails to appear without good cause, the Hearing Officer may:

1. Proceed with the hearing,
2. Reschedule the hearing,
3. Issue a decision based on the petition and memoranda provided, or
4. Issue a default order.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-115 renumbered to R15-10-120, new Section R15-10-115 renumbered from R15-10-109 and amended effective December 23, 1993 (Supp. 93-4).

R15-10-116. Hearing Procedure

A. Hearings may be held in person, via telephone, or by the submission of memoranda. Hearings by memoranda shall be conducted by the submission of memoranda according to a schedule prescribed by the Hearing Officer.

B. The Hearing Officer may conduct the hearing in an informal manner.

1. The Hearing Officer may state any facts stipulated,
2. An opening statement may be made by any party in the hearing,
3. The position of each party shall be stated and evidence shall be presented,
4. Each party may reply to any statements or arguments, and
5. Closing statements or arguments may be made by any party.

C. The Hearing Officer may remand any matter to the applicable section of the Department of Revenue at the request of either party or at the Hearing Officer's own discretion.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-116 renumbered to R15-10-121, new Section R15-10-116 renumbered from R15-10-112 and amended effective December 23, 1993 (Supp. 93-4).

R15-10-117. Evidence

A. Each party to a hearing may:

1. Call and examine witnesses,
2. Introduce exhibits,
3. Cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination,
4. Dispute the testimony of any witness regardless of which party first called the witness to testify, and
5. Challenge the evidence presented.

B. The Hearing Officer shall admit any relevant evidence, but shall consider objections to the admission of and comments on the weakness of evidence in assigning weight to the evidence. The Hearing Officer may deny admission of evidence that the Hearing Officer considers irrelevant, immaterial, or unduly repetitious.

C. A party may substitute an exact copy of an original exhibit.

D. The Hearing Officer may call anyone at the hearing to testify.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-117 renumbered to R15-10-118, new Section R15-10-117 renumbered from R15-10-114 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-118. Burden of Proof

A. Subsequent to the issuance of a notice by the Department and in answer to the findings in that notice, the burden of proof is on the petitioner as to all issues of fact.

B. In any proceeding involving the issue of fraud with intent to evade the tax, the burden of establishing fraud is on the Department.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-118 renumbered to R15-10-122, new Section R15-10-118 renumbered from R15-10-117 and amended effective December 23, 1993 (Supp. 93-4).

R15-10-119. Stipulation of Facts

The petitioner and the Department may file a stipulation stating the facts upon which they agree, the facts which are in dispute, and the reasons for the dispute.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Amended effective July 24, 1986 (Supp. 86-4). Former Section R15-10-119 renumbered to R15-10-130, new Section R15-10-119 renumbered from R15-10-113 and amended effective December 23, 1993 (Supp. 93-4).

R15-10-120. Official Notice

The Hearing Officer may take official notice of the following as an admission of facts:

1. The records maintained by the Department of Revenue,
2. Tax returns filed with the Department of Revenue for or on behalf of the taxpayer or any affiliated person together with related records on file with the Department, or
3. A fact which is generally known in this state or which is capable of accurate and ready determination by reference to sources whose accuracy cannot reasonably be questioned.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-120 repealed, new Section R15-10-120 adopted effective July 24, 1986 (Supp. 86-4). Former Section R15-10-120 renumbered to R15-10-131, new Section R15-10-120 renumbered from R15-10-115 and amended effective December 23, 1993 (Supp. 93-4).

R15-10-121. Subpoena by Petitioner

A. A petitioner requesting a subpoena shall apply, to the Hearing Officer submitting a proposed subpoena at least 10 days before the hearing.

B. The Hearing Office shall not issue a subpoena for confidential or privileged information.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-121 repealed, new Section R15-10-121 adopted effective July 24, 1986 (Supp. 86-4). Former Section R15-10-121 renumbered to Section R15-10-132, new Section R15-10-121 renumbered from R15-10-116 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-122. Transcripts and Records

A. All oral proceedings shall be tape-recorded by the Hearing Office. A copy of the tape recording of the hearing shall be furnished to a party requesting it.

B. A party to the proceedings may arrange at the party's own expense to have the hearing manually transcribed. A full copy of any transcript cited in any proceeding shall be furnished to the opposing party.

C. The records and files of the Department shall not be removed from the Department by the petitioner for use as evidence or other purposes. The Department shall, as permitted by law, furnish certified copies as requested. Such copies shall be provided at a reasonable charge not to exceed the commercial rate for such service.

Historical Note

Renumbered from R15-10-118 and amended effective December 23, 1993 (Supp. 93-4).

R15-10-123. Reserved

R15-10-124. Reserved

R15-10-125. Reserved

R15-10-126. Reserved

R15-10-127. Reserved

R15-10-128. Reserved

R15-10-129. Reserved

R15-10-130. Decisions and Orders

A. The Hearing Officer shall issue a written decision, which sets forth the reasons for the decision, after reviewing the evidence submitted by the petitioner and the Department.

B. A decision dismissing a petition as incomplete or not timely filed shall be based on the Hearing Officer's review of the petition, documents available, and any information officially noticed.

C. The Hearing Office shall mail the decision of the Hearing Officer, by certified mail, to the last known address of the taxpayer. The Hearing Office shall immediately forward a copy of the decision to the applicable section in the Department of Revenue and to the Director.

Historical Note

Renumbered from R15-10-119 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-131. Review of Decision of the Hearing Officer or ALJ

A. The decision of the Hearing Officer or ALJ is the final order of the Department of Revenue 30 days after the taxpayer receives the decision unless prior to that time:

1. The petitioner or the Department petitions the Director to review the decision, or
2. The Director independently determines that the decision requires review.

B. The Director may grant an extension of time for filing a petition for review on a showing of good cause, if the request for an extension is in writing and is filed with the Director before the expiration of the 30-day period prescribed in subsection (A).

C. A petition or an extension request filed by mail is considered filed on the date shown by the U.S. Postal Service postmark.

D. The Director may grant a review of the decision of the Hearing Officer or ALJ if 1 of the parties asserts that any of the following causes has materially affected the party's rights:

1. The findings of fact, conclusions of law, order, or decision are not supported by the evidence or are contrary to law;
2. The party seeking review was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct of the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Material evidence which has been newly discovered;

5. Error in admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the action; or
6. That the decision is the result of bias or prejudice.

E. The Director may independently determine to review a decision of the Hearing Officer or ALJ if it appears that any of the causes listed in subsection (D) may have materially affected a party's rights.

F. The petition for review of the Hearing Officer's or ALJ's decision shall be in writing, shall state the grounds upon which the petition is based, and the Director may grant leave to amend the petition at any time before it is ruled upon by the Director. At the time of filing, the petitioning party shall also serve a copy of the petition on the other party.

G. If the Director has independently determined that the decision requires review, the Director shall send, by certified mail, notification of intent to review to the taxpayer, not more than 30 days after the taxpayer's receipt of the Hearing Officer's or ALJ's decision.

H. On petition for review, or on the Director's independent review:
1. The Director may open the decision of the Hearing Officer or ALJ, take additional evidence, amend findings of fact and conclusions of law, or make new findings and conclusions, and issue a new decision;
2. The Director may issue a decision that summarily affirms the decision of the Hearing Officer or ALJ; or
3. The Director may remand any matter to the Hearing Office, the Office of Administrative Hearings, or the appropriate section or area of the Department at the request of either party or at the Director's discretion.

I. The Director's decision shall be sent by certified mail to the taxpayer, at the taxpayer's last known address.

J. The taxpayer may appeal a Director's decision or a decision that is final pursuant to subsection (A) to the State Board of Tax Appeals or tax court under R15-10-132.

Historical Note
Renumbered from R15-10-120 and amended effective December 23, 1993 (Supp. 93-4). Amended effective October 11, 1995 (Supp. 95-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-132. Appeal of the Final Order of the Department of Revenue

A. Within 30 days of the date an order of the Department becomes final, a taxpayer disputing the final order of the Department of Revenue may:
1. File an appeal with the State Board of Tax Appeals, or
2. Bring an action in tax court, unless the case involves an individual income tax dispute of less than $5,000.

B. If the Director is reviewing the Hearing Officer's or ALJ's decision under R15-10-131, such review by the Director shall be completed before an appeal can be taken to the State Board of Tax Appeals or an action can be brought in tax court.

Historical Note
Renumbered from R15-10-121 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

ARTICLE 2. ADMINISTRATION

R15-10-201. Closing Agreements Relating to Tax Liability

A. A closing agreement provided for in A.R.S. § 42-123 or A.R.S. § 42-139.06 may relate to any taxable period.
1. A closing agreement entered into for taxable periods ending prior to the date of the agreement may relate to the total liability of the taxpayer or to 1 or more separate items affecting the liability of the taxpayer.
2. A closing agreement entered into for taxable periods ending subsequent to the date of the agreement shall only relate to 1 or more separate items affecting the liability of the taxpayer.
3. The Department and the taxpayer may enter into a closing agreement even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates.
4. There may be a series of closing agreements relating to the liability of a taxpayer for a single taxable period.

B. A closing agreement shall be in writing and shall state the conditions of the agreement.

C. A closing agreement is not effective until it is signed by the taxpayer or an authorized representative of the taxpayer, and by an authorized employee of the Department.

Historical Note
Adopted effective September 16, 1987 (Supp. 87-3). Former Section R15-10-201 renumbered to R15-5-2207 (Supp. 94-1).New Section R15-10-201 renumbered from R15-2-231 (Supp. 94-1). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-202. Extension of time for filing returns; automatic extensions

Application for extensions of time for filing income tax returns should be addressed to the Department and must contain a full recital of the causes for the delay. Except in the case of taxpayers who are abroad, an extension for filing income tax returns may not be granted for more than 6 months. A copy of the extension shall be filed with the return. If the extension has been lost, the taxpayer may file an affidavit of loss and request a duplicate. If the return is not accompanied by the extension or the affidavit, the taxpayer will be subject to all the penalties as if an extension had not been granted. In those cases where a federal extension has been granted, the Department shall allow a similar time. If, however, a copy of the federal extension is not filed with the Department in conjunction with his Arizona income tax return, the taxpayer shall be subject to all the applicable legal penalties as if the extension has not been granted.

Historical Note
Adopted effective April 26, 1989 (Supp. 89-2). Section R15-10-202 renumbered to R15-5-601 (Supp. 94-1). New Section R15-10-202 renumbered from R15-2-326 at 5 A.A.R. 1619, May 28, 1999 (Supp. 99-2).

ARTICLE 3. AUTHORIZED TRANSMISSION OF FUNDS

R15-10-301. Definitions

The following definitions apply for purposes of this Article:
1. "ACH" means an automated clearing house that is a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions.
2. "ACH credit" means an electronic funds transfer generated by a payor, cleared through an ACH for deposit to the Department account.
3. "ACH debit" means an electronic transfer of funds from a payor's account, as indicated on a signed authorization agreement, that is generated at a payor's instruction and cleared through an ACH for deposit to the Department account.
4. "Addenda record" means the information required by the Department in an ACH credit transfer or wire transfer, in the approved electronic format prescribed in R15-10-306(B).

5. "Authorized means of transmission" means the deposit of funds into the Department account by electronic funds transfer.
6. "Cash Concentration or Disbursement plus" or "CCD plus" means the standardized data format approved by the National Automated Clearing House Association for remitting tax payments electronically.
7. "Data Collection Center" means a 3rd party who, under contract with the Department, collects and processes electronic funds transfer payment information from payors.
8. "Department" means the Arizona Department of Revenue.
9. "EFT Program" means the payment of taxes by electronic funds transfer as specified by this Article.
10. "Electronic Funds Transfer" or "EFT" means any transfer of funds initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape, where the person initiating the transfer orders, instructs, or authorizes a financial institution to debit or credit an account using the methods specified in these rules.
11. "Financial institution" means a state or national bank, a trust company, a state or federal savings and loan association, a mutual savings bank, or a state or federal credit union.
12. "Payment information" means the data that the Department requires of a payor making an electronic funds transfer payment.
13. "Payor" means a taxpayer or payroll service.
14. "Payor information number" means a confidential code assigned to identify the payor and allow the payor to communicate payment information to the Data Collection Center.
15. "Payroll service" means a 3rd party, under contract with a taxpayer to provide tax payment services on behalf of the taxpayer.
16. "State Servicing Bank" means a bank designated under A.R.S. Title 35, Chapter 2, Article 2.
17. "Tax type" means a tax that is subject to electronic funds transfer, each of which shall be considered a separate category of payment.
18. "Wire transfer" or "Fedwire" means an instantaneous electronic funds transfer initiated by a payor.

Historical Note
Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2).

R15-10-302. General Requirements

A. For tax periods beginning on or after January 1, 1993, the following taxpayers shall remit the following tax payments:
1. Taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of $100,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission;
2. Corporations which had an Arizona income tax liability during the prior tax year of $100,000 or more shall remit Arizona estimated income tax payments by an authorized means of transmission.

B. For tax periods beginning on or after January 1, 1994, the following taxpayers shall remit the following tax payments:
1. Taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of $50,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission;
2. Corporations which had an Arizona income tax liability during the prior tax year of $50,000 or more shall remit Arizona estimated income tax payments by an authorized means of transmission.

C. For tax periods beginning on or after January 1, 1997, the following taxpayers shall remit the following tax payments:
1. Taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of $20,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission;
2. Corporations which had an Arizona income tax liability during the prior tax year of $20,000 or more shall remit Arizona estimated income tax payments by an authorized means of transmission.

D. The average Arizona quarterly withholding tax liability is determined by dividing the taxpayer's total Arizona withholding tax liability for the calendar year by 4.

E. For tax periods beginning on or after July 1, 1997, taxpayers who, under A.R.S. Title 42, Chapters 8, 8.1, 8.2, 8.3, 9.1, and 9.2 had an annual tax liability during the prior calendar year of $1 million or more shall remit these tax payments by an authorized means of transmission.

Historical Note
Adopted effective July 30, 1993 (Supp. 93-3). Amended effective December 17, 1993 (Supp. 93-4). Amended effective October 4, 1996 (Supp. 96-4).

R15-10-303. Voluntary Participation

A. For tax periods beginning on or after January 1, 1993, a taxpayer who, during the prior tax year, had a corporate income tax liability or an average quarterly withholding tax liability of less than $100,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.

B. For tax periods beginning on or after January 1, 1994, a taxpayer who, during the prior tax year, had a corporate income tax liability or an average quarterly withholding tax liability of less than $50,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.

C. For tax periods beginning on or after January 1, 1997, a taxpayer who, during the prior tax year, had a corporate income tax liability or an average quarterly withholding tax liability of less than $20,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with by R15-10-304.

D. For tax periods beginning on or after July 1, 1997, a taxpayer who, under A.R.S. Title 42, Chapters 8, 8.1, 8.2, 8.3, 9.1, and 9.2 had an annual tax liability during the prior calendar year, of less than $1 million dollars may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.

E. For tax periods beginning on and after January 1, 1999, any taxpayer who has a luxury tax liability may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.

F. A taxpayer authorized to participate in the EFT Program shall provide at least 30 days prior written notice to the Department if the taxpayer elects to cease voluntary participation in the EFT Program.

Historical Note
Adopted effective July 30, 1993 (Supp. 93-3). Amended

effective December 17, 1993 (Supp. 93-4). Amended effective October 4, 1996 (Supp. 96-4). Amended effective June 15, 1998 (Supp. 98-2).

R15-10-304. Authorization Agreement

A. The payor shall complete an electronic funds transfer authorization agreement in the form prescribed by the Department at least 30 days prior to initiation of the 1st applicable transaction. The form shall include the following information:
1. Name and address of the taxpayer:
2. Federal identification number of the taxpayer;
3. Withholding number of the taxpayer, if applicable;
4. Transaction privilege tax license number of taxpayer, if applicable;
5. Type of action being taken;
6. Tax type;
7. Method of payment;
8. Name and phone number of taxpayer's EFT contact person;
9. Name and address of any payroll service, if applicable;
10. Name and phone number of the payroll service's EFT contact person;
11. Financial institution name and address;
12. Type of bank account;
13. Name on bank account;
14. Bank account number; and,
15. Bank routing transit number.

B. A payor shall submit a revised authorization agreement to the Department at least 30 days prior to any change in the information required in subsection (A).

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2).

R15-10-305. Methods of Electronic Funds Transfer

A. Payors shall use the ACH debit transfer method to remit payment by electronic funds transfer unless the Department grants permission to use the ACH credit method.

B. The Department may authorize the use of the ACH credit method for payors desiring to use this method. A payor that chooses to use the ACH credit method shall provide the payment information required in R15-10-306(B)(2).

C. The Department may withdraw permission to use the ACH credit method of payment if the payor shows disregard for the requirements and specifications of these rules by failing to:
1. Make timely electronic funds transfer payments,
2. Provide timely payment information,
3. Provide the required addenda record with the electronic funds transfer payment, or
4. Make correct payment.

D. Payors who, for reasons beyond their control, are unable to use their established method of payment may request that the Department accept deposits to the Department account via wire transfer in accordance with the following:
1. The payor shall contact the Department, state the reason which prevents timely compliance under either the ACH debit method or ACH credit method, and obtain verbal approval to wire transfer the tax payment to the Department account prior to initiating the transmission.
2. Approved wire transfers shall be accompanied by an addenda record, that includes the same information required for ACH credit transfers under R15-10-306(B)(2).

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2).

R15-10-306. Procedures for Payment

A. Payors using the ACH Debit Method shall report payment information to the Data Collection Center no later than the time prescribed by the State Servicing Bank on the last business day before the due date of the payment.
1. Payment information shall be communicated by 1 of the following means:
   a. Operator-assisted communication of payment information made orally by rotary or touch-tone telephone,
   b. Touch-tone communication of payment information made by entering data via key pad of a touch-tone telephone, or
   c. Computer terminal linked with the Data Collection Center.
2. Payors shall communicate the following payment information to the Data Collection Center:
   a. Payor information number,
   b. Taxpayer identification number,
   c. Tax type,
   d. Payment amount,
   e. Tax period,
   f. Payment due date, and
   g. Payment sequence number.

B. Payors authorized to use the ACH credit method shall initiate payment transactions directly with a financial institution in a timely manner to ensure that the payment is deposited to the Department account on or before the payment due date.
1. All ACH credit transfers shall be in the CCD-plus addenda format.
2. The addenda format, as specified in subsection (B)(1), shall include the following information:
   a. Taxpayer identification number,
   b. Tax type,
   c. Payment amount,
   d. Tax period,
   e. Payment sequence number,
   f. Taxpayer verification number,
   g. Department account number, and
   h. American Bank Association 9-digit number of the receiving bank.

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2).

R15-10-307. Timely Payment

A. Payors remitting tax payments through electronic funds transfer shall initiate the transfer so that the payment is deposited to the Department account on or before the payment due date.

B. If a tax due date falls on a Saturday, Sunday, or legal holiday, the deposit by electronic funds transfer shall be made no later than 5:00 p.m. on the next banking day.

C. Taxpayers required to, or who voluntarily elect to, participate in the EFT Program shall be subject to the penalty prescribed by A.R.S. § 42-136(D) if payments are not deposited to the Department account on or before the payment due date.

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2).

ARTICLE 4. REIMBURSEMENT OF FEES AND OTHER COSTS RELATED TO AN ADMINISTRATIVE PROCEEDING

R15-10-401. Application for Reimbursement of Fees and Other Costs Related to an Administrative Proceeding

A. To apply for reimbursement of reasonable fees and other costs, as provided in A.R.S. § 42-139(14), a taxpayer shall file a written application with the Department's problem resolution officer.

B. An application shall include the following:
1. Taxpayer's name, address, and identification number;
2. Identification of the tax type and the administrative proceeding for which reimbursement is sought;
3. A detailed explanation of the reasons why the taxpayer alleges that the position of the Department in the administrative proceeding was not substantially justified;
4. If multiple issues were presented in the administrative proceeding and the taxpayer did not prevail on all issues, a detailed explanation of the issue or set of issues on which the taxpayer prevailed, a detailed explanation of the issue or set of issues on which the taxpayer did not prevail, and a detailed explanation as to why the issue or set of issues on which the taxpayer prevailed is the most significant issue or set of issues presented in the administrative proceeding;
5. A statement that the taxpayer has not unduly and unreasonably protracted the administrative proceeding for which reimbursement is sought;
6. A statement that the reason the taxpayer prevailed was not due to an intervening change in the applicable law; and
7. A detailed explanation of the nature and amount of each specific item for which reimbursement is sought.

C. An application may also include any other matters that the taxpayer wishes the Department's problem resolution officer to consider in determining whether and in what amount reimbursement should be made.

D. The taxpayer shall sign the application. It shall contain or be accompanied by a written verification under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

E. If a paid representative of the taxpayer prepares the application, the representative shall also sign the application. It shall contain or be accompanied by a written verification under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the representative's information and belief.

F. Fees and other costs incurred in making application for reimbursement or regarding an appeal of a decision for reimbursement do not relate to an administrative proceeding in connection with an assessment, determination, collection, or refund of tax as required by A.R.S. § 42-139(14). Therefore, fees and other costs incurred with respect to an application or appeal under A.R.S. § 42-139(14) are not reimbursable.

Historical Note
Adopted effective March 13, 1998 (Supp. 98-1).

R15-10-402. Documentation of Payment of Fees and Other Costs

The taxpayer shall submit with the application documentation which shows payment of the fees and costs for which the taxpayer seeks reimbursement. The taxpayer shall submit a separate itemized statement for each firm or individual that provided services covered by the application. The itemized statement shall show the hours spent in connection with the administrative proceeding by each individual, a description of the specific services performed, and the rates used in computing each fee. Each statement shall reflect payment or the taxpayer shall attach proof of payment to the statement. Separate, itemized statements of any other costs incurred by the taxpayer, together with proof of payment, shall also accompany an application.

Historical Note
Adopted effective March 13, 1998 (Supp. 98-1).

R15-10-403. Filing an Application

A. A taxpayer shall file an application for reimbursement of fees and other costs only after the conclusion of administrative proceedings, but not later than 30 days after the conclusion of administrative proceedings.

B. For purposes of this rule, the conclusion of administrative proceedings is determined as follows:
1. For a decision of a hearing officer or administrative law judge, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the decision unless, within the 30-day period, 1 of the following occurs:
   a. The taxpayer appeals the decision, or any part of the decision, to the State Board of Tax Appeals;
   b. The taxpayer or the Department petitions the Director to review the decision, or any part of the decision;
   c. The Director independently determines that the decision, or any part of the decision, requires review.
2. When a decision of a hearing officer or administrative law judge is subject to a review by the Director, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the Director's decision unless, within the 30-day period, the taxpayer appeals the decision, or any part of the decision to the State Board of Tax Appeals.
3. When a taxpayer appeals a decision, or any part of a decision, to the State Board of Tax Appeals, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the decision of the State Board of Tax Appeals.

Historical Note
Adopted effective March 13, 1998 (Supp. 98-1).

R15-10-404. Decisions

A. The Departments's problem resolution officer shall issue a written decision on each application for reimbursement of fees and other costs. The problem resolution officer shall issue the decision within 30 days after receipt of the application and shall set forth the reason for the decision.

B. The problem resolution officer's decision is issued when mailed to the taxpayer's address furnished in the application.

Historical Note
Adopted effective March 13, 1998 (Supp. 98-1).

TITLE 15. REVENUE

CHAPTER 12. DEPARTMENT OF REVENUE PROPERTY TAX OVERSIGHT COMMISSION

(Authority: A.R.S. §§ 42-105 and 42-306)

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. PROPERTY TAX LEVY LIMITS

ARTICLE 3. HEARING AND APPEAL PROCEDURE

ARTICLE 1. GENERAL PROVISIONS

R15-12-101. Definitions

Unless the context requires otherwise, the following definitions shall apply:

1. "Commission" means the Property Tax Oversight Commission as established by A.R.S. § 42-306.
2. "Excess collections" means sums collected during the previous fiscal year in excess of the sum of the previous fiscal year's maximum allowable primary property tax levy and the amount which could have been collected for escaped property for taxes levied in the previous fiscal year.
3. "Excess expenditures" means the amount certified by the Auditor General's office.
4. "Political subdivision" means counties, cities including charter cities, towns, and community college districts.
5. "Quorum" means a majority of the members of the Commission.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-102. Principal Office of the Property Tax Oversight Commission

The principal office of the Property Tax Oversight Commission shall be the Department of Revenue Building, 1600 West Monroe, Phoenix, Arizona 85007. All inquiries, correspondence, and filings shall be delivered to the Property Tax Oversight Commission at this location. All meetings and hearings shall be held at this location unless designated in writing by the Commission.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-103. Quorum

A quorum shall be required for making orders and decisions or transacting other official business, as delineated in A.R.S. § 42-306.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-104. Hearings

A quorum of the commission shall directly conduct all hearings regarding contested cases before the commission.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Section repealed; new Section adopted effective October 10, 1997 (Supp. 97-4).

R15-12-105. Voting

A. A Commission member may vote on decisions if:
1. The member was present at all hearings during which the matter being voted on was discussed;
2. The member was not present at all hearings but the member reviewed the evidence submitted at the hearings and attended or listened to tape recordings of all hearings during which the matter being voted on was discussed; or
3. The parties submitted the matter for a decision based on a joint stipulation of facts.

B. Any member who dissents may state the reasons for the member's dissent.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Section amended effective October 10, 1997 (Supp. 97-4).

R15-12-106. Decisions

A. A Commission decision is rendered when signed by the Chairman.

B. Decisions of the Commission shall be sent to the affected political subdivision and the affected County Board of Supervisors.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-107. Copying and Recording Costs

A. The costs of copying shall be paid by the person making the request.

B. Court reporting arrangements and costs shall be the responsibility of the person employing the court reporter.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

ARTICLE 2. PROPERTY TAX LEVY LIMITS

R15-12-201. Primary Property Tax Calculations

A. The Commission shall calculate the maximum allowable primary property tax levy limits for political subdivisions as follows:

1. The maximum allowable primary property tax rate shall equal the resulting value of the following rounded to four decimal places:
   a. 102% of the sum of the previous fiscal year's maximum primary property tax levy divided by;
   b. the sum of the values provided by the County Assessor's office and the Department for the current year's value of the previous year's centrally assessed, locally assessed real, locally assessed secured personal, and locally assessed unsecured personal property, divided by 100.
2. The maximum allowable primary property tax levy limit shall equal the sum of the current value of the current year's property as provided by the County Assessor and the Department including centrally assessed, locally real, locally assessed secured personal, and locally assessed unsecured personal property, divided by 100 and multiplied by the maximum allowable primary property tax rate.
3. Political subdivisions may request that a specific alternative methodology be considered by the Commission. If the Commission determines the alternative methodology will more accurately calculate the levy limit of the political subdivision, such alternative methodology shall be used.

B. The Commission shall calculate the allowable primary property tax levy limit by reducing the maximum allowable primary property tax levy limit by the sum of the amount of excess levies, excess collections and excess expenditures.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-202. Involuntary Tort Judgments

A. A political subdivision that paid an involuntary tort judgment may only use the judgment to:
1. Offset excess collections from the previous fiscal year; or
2. Justify a primary property tax levy limit being set above the maximum allowable rate in the current fiscal year.

B. The Commission shall recognize an involuntary tort judgment if:
1. The judgment is pursuant to a court order or settlement agreement;
2. The judgment is approved for payment by the political subdivision's governing board;
3. The Attorney General certifies that the judgment is an involuntary tort judgment; and
4. The political subdivision submits copies of the court order or settlement agreement and the minutes of the governing board's pay approval to the Commission on or before the 1st Monday of July.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3). Spelling of the word "tort" in subsection (A) corrected (Supp. 94-3). Amended effective October 10, 1997 (Supp. 97-4).

R15-12-203. Levy Limit Worksheets

A. The counties shall simultaneously submit copies of the final levy limit worksheets for all political subdivisions in their respective counties to the Commission and the affected political subdivision. The County Assessor shall verify that the copies are true and correct and, if so, certify the copies.

B. The counties shall deliver the worksheets to affected political subdivisions and the Commission on or before the 2nd Monday of August.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3). Amended effective October 10, 1997 (Supp. 97-4).

R15-12-204. Political Subdivision Agreement

A. If a political subdivision disagrees with the county's final levy limit worksheet calculations, the political subdivision shall, within three days of receipt of the county's calculations, file in writing with the Commission a statement of disagreement stating with particularity the grounds for its disagreement and the figures it deems appropriate. Failure to act within the three days shall be deemed agreement by the political subdivision.

B. Upon timely petition of the political subdivision for good cause shown, or on its own motion, the Commission may permit the political subdivision to present objections to specific items at a later date.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-205. Actual Levies

The chief county fiscal officers shall certify and submit to the Commission the amount of the primary property tax levied for each political subdivision within their counties within three days after each levy is determined.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3).

ARTICLE 3. HEARING AND APPEAL PROCEDURE

R15-12-301. Notice of Violation

The notice of violation shall specify the violations found and the monetary amount in dispute. The notice shall inform the political subdivision of the right to petition on or before October 1 for a hearing on the Commission's finding of violation.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-302. Petition

A. All objections to the Commission's notice of violation shall be by written petition to the Commission. The petition shall include the following information:
1. Name, title, address, and phone number of the political subdivision's contact person;
2. A particularized statement of the errors allegedly committed by the Commission in its findings;
3. A statement of facts upon which the political subdivision relies to support the assignment of errors alleged to have been committed by the Commission;
4. The relief sought; and
5. Whether an oral hearing is requested.

B. The petition shall be addressed to the Chairman of the Commission.

C. The petition shall be in a form that can readily be duplicated on standard office equipment.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-303. Grounds for Petition

A. Objections to notices of violation shall be limited to disputing the factual findings and conclusions of law of the Commission.

B. The Commission shall refuse all petitions not based on a dispute of its factual findings or conclusions of law. Financial impacts on the political subdivision shall not be considered by the Commission in its decision-making.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-304. Manner of Filing

A. An original and six copies of the petition and any supporting memoranda shall be filed with the Chairman.

B. No fee shall be charged for the filing of any petition or supporting memoranda.

C. Upon receipt of a petition, the Commission staff shall record the filing of the petition and supporting memoranda.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-305. Supplementing the Petition

The Commission may grant a political subdivision's request for an additional period of time, not to exceed 15 days, within which to supplement a timely filed petition. The Commission shall not consider a supplement to the petition that the political subdivision files after the additional period of time granted.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Amended effective October 10, 1997 (Supp. 97-4).

R15-12-306. Withdrawal of Petition

A. The petition may be withdrawn at the written request of the political subdivision before a final decision by the Commission is issued.

B. When the petition is withdrawn, the Commission's finding shall be deemed final and shall not be subject to any further appeal.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-307. Rescheduling of Hearing

The Commission may postpone or recess the hearing for good cause shown. The Commission shall specify the date, time, and place for the hearing to continue.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-308. Evidence

A. The political subdivision and the Commission may:
1. Call and examine witnesses,
2. Introduce exhibits,
3. Cross-examine opposing witnesses on any matter relevant to the issues, even though the matter was not covered in the direct examination,
4. Impeach any witness regardless of which party first called the witness to testify,
5. Rebut the evidence against it, and
6. Call and examine as if under cross-examination a party or its employees, agents, or officers.

B. The Commission shall be liberal in admitting evidence, but the Commission shall consider objections to the admission of and comments on the weakness of evidence in assigning weight to the evidence.

C. The Commission shall take oral evidence only on oath or affirmation.

D. Legible copies may be admitted into evidence or substituted in place of the original documents.

E. The original records and files of the Commission or the Department of Revenue shall not be removed from their offices for use as evidence or for other purposes.

F. The Commission may take official notice of the records maintained by the Department of Revenue.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Amended effective October 10, 1997 (Supp. 97-4).

R15-12-309. Subpoena

The Commission may, on request of a party or on its own initiative, issue subpoenas.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Amended effective October 10, 1997 (Supp. 97-4).

R15-12-310. Post-Hearing Memoranda

If the Commission desires the submission of post-hearing memoranda or information, the Commission shall, at the time of the hearing, direct the parties to submit the post-hearing memoranda or information within a period of time set by the Commission.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Amended effective October 10, 1997 (Supp. 97-4).

R15-12-311. Prehearing Issue Resolution

If the Commission and a political subdivision agree as to the resolution of some or all of the issues prior to the hearing, the Commission shall stipulate to the agreed issues in the record and shall consider those issues withdrawn. The Commission shall then issue an order of partial resolution that becomes part of the Commission's record. The Commission shall forward copies of the order to the political subdivision, County Assessor and the Department of Revenue.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Amended effective October 10, 1997 (Supp. 97-4).

R15-12-312. Rehearing

A. Any party in a contested case before the Commission may file a petition for rehearing or review with the Commission within 30 days after receiving the final decision. The party shall attach a supporting memorandum, specifying the grounds for the petition.

B. The party who filed the petition for rehearing or review may amend it at any time before the Commission rules. Any other party to the original hearing may file a response within 5 days after the commission's receipt of the petition for rehearing or review. The party shall support the response with a memorandum discussing the legal and factual issues. Either party or the Commission may request oral argument.

C. The Commission may grant a rehearing or review of the decision for any of the following causes that materially affect a party's rights:
1. Irregularity in the administrative proceedings, or any order or abuse of discretion which deprived a party of a fair hearing;
2. Misconduct of the Commission, its staff, or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
6. The decision is not justified by the evidence or is contrary to law.

D. The Commission shall not consider the financial impact to the political subdivision as a cause for rehearing.

E. The Commission may grant a rehearing or review within 15 days after its receipt of the petition for rehearing or review. The Commission may grant a petition for rehearing or review for a reason not stated in the petition. An order modifying a

decision or granting a rehearing shall specify the ground or grounds for the order, and any rehearing shall only cover those matters. If the commission fails to take action on a petition for rehearing or review within 15 days of the Commission's receipt of the petition, the petition shall be deemed denied.

F. The Commission may on its own initiative order a rehearing or review within 15 days after its decision is rendered for any reason set forth in subsection (C) of this rule. The order shall specify the grounds for rehearing or review.

G. The petitioner shall include all affidavits with the petition for rehearing or review when the petition for rehearing is based upon affidavits. An opposing party may, within 5 days after the petition for rehearing or review is filed, submit opposing affidavits. The Commission may extend this period for an additional period of time not to exceed 5 days for good cause shown. Reply affidavits may be permitted.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).
Amended effective October 10, 1997 (Supp. 97-4).